Register No. H. 167.
I. L. R. [1953] HYD.

Parts VI & VII
Pages 337 to 424

The Indian Law Reports

HYDERABAD SERIES

JUNE - JULY 1953

EDITOR

K. S. Sitarama Iyengar, B. A., LL. B.

Printed by the Superintendent, High Court Press, and Published by the Editor, under the Authority of the Hon'ble Court of Judicature, Hyderabad-Deccan.

PURUSHOTTAMDAS MEMORIAL SERIES

Principles of Dharmasastra

by Sri B. N. CHOBE

Senior Advocate, Supreme Court of H.E.H. ... (Hyderabad—A.P.)

FOREWORD by *Hon'ble Sri Justice P. N. Sapru.*

"A scholarly piece of work in which various topics have been discussed from the point of view of Hindu books of law."

All India Reporter

"We recommend the book to those interested in the study of the origin and growth of the rules of Hindu Law."

Allahabad Law Journal

"Deserves thoughtful reading."

Bombay Law Reporter

"A very useful book for all lawyers and literate people."

Calcutta Law Times

"Students of Hindu Law will undoubtedly find the book instructive and interesting — the book displays the author's sagacity for research and deserves careful study."

Calcutta Weekly Notes

"Compact and given in an analytical manner the principles of law as evidenced by the Dharma Sastras."

Madras Law Journal

"The subject has been treated on a very high level, and students of Indian culture will find in this book a couple of information and food for thought."

Supreme Law Journal

TABLE OF CASES REPORTED

SUPREME COURT OF INDIA

EXTRAORDINARY ORIGINAL JURISDICTION

APPELLATE CIVIL

APPELLATE CRIMINAL

TABLE OF CASES CITED

INDEX

PAGE

PAGE

that a revision does not lie against a mere finding of the court below.

2. The suit was based upon a promissory note. At the time when the plaint was presented, the promissory note was not filed and on the date on which it was brought on record, the limitation for filing the suit had expired. It was urged on behalf of the defendant in the lower court that the plaint should be deemed to have been presented on the date on which the promissory note was filed and the suit was therefore barred by time. The contention was based on O. 7, r. 18 of the Code of Civil Procedure, which renders the production of a document on which the plaintiff relies imperative on the date on which the plaint is presented. It is said that according to the Code, the plaint must be deemed not to have been presented on the date it was actually filed but should be deemed to have been presented on the date on which the promissory note was filed. This is wrong. According to O. 7, r. 18, a document which ought to be produced by the plaintiff when the plaint is presented and which is not so produced, should not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit. A very wide discretion is thus vested in the court in connection with the reception of a document which did not accompany the plaint. The presentation of plaint and the acceptance in evidence of a supporting document are two different things. There is nothing in the Code which would render the plaint unaccompanied by the supporting documents ineffective or its presentation void. O. 4, which was referred to by the applicant's learned counsel, has no application. The court below, therefore, rightly refused to accept the argument in bar of limitation.

3. Another preliminary point raised by the defendant was that the promissory note was not properly stamped. On this matter also, the court came to a finding against the defendant. The result is that both the preliminary objections are overruled and the case is now set down for evidence.

4. In this revision petition, it is contended by the defendant that the view of law taken on the two preliminary points by the learned Sub-Judge at Karimnagar is wrong. Obviously, there is no defect of jurisdiction involved, and it is impossible to entertain the revision under s. 115 of the Civil Procedure Code.

5. Before concluding this judgment, I would like to say for the guidance of the subordinate courts that there is no warrant

in the code for deciding issues piecemeal unless the court decides to apply O. 14. r. 2, which is an exceptional provision applicable to cases when the point of law raised is likely in the opinion of the court to be fatal to the suit or the defence. The Privy Council has laid down repeatedly that as a general rule when a number of issues arise in a case, it is the duty of the trial court to give its findings on all issues in order to avoid a remand. To enter upon each question separately and then to bring the finding thereon to this court either by way of revision or appeal is wholly wrong. The practice cannot be deprecated too strongly, for, besides being unauthorised, it also results in holding up the decision of the case for unconscionably long periods.

6. This application has no force. I reject it summarily.

Application rejected.

APPELLATE CIVIL

Before Mr. Justice Mohammed Ahmed Ansari and

Mr. Justice P. Jaganmohan Reddy

THE HYDERABAD DECCAN CIGARETTE FACTORY PETITIONER*

v.

THE COMMISSIONER OF INCOME-TAX, HYDERABAD RESPONDENT

Excess Profits Tax Act, s. 12 (2) (XV)—Deduction for the amount expended wholly and exclusively for the purposes of business—Remuneration paid to an employee—Reasonableness of the payment—Burden of proof on the assessee—Finding of the taxing authority—Question of fact.

The petitioner-assessee, while returning the income for the year 1357 F. claimed deduction under s. 12 (2) (XV) of the Excess Profits Tax Act, Hyderabad for an amount of Rs. 1,25,482, being the salary and 4 annas share of profits payable to the manager under an agreement. But the taxing authorities gave deduction to only Rs. 36,000 as being the reasonable remuneration of the manager which could be deemed as an expenditure laid out or expended wholly and exclusively for the purpose of the assessee's business. Upon an application by the assessee, the High Court directed the Income-tax Tribunal at Bombay to state a case on the questions whether the tribunal was right in law in disallowing the sum of Rs. 1,25,482 as an expenditure not laid out or expended wholly or exclusively for the purpose of the assessee's business and whether the tribunal was correct in law in arbitrarily fixing the amount of Rs. 36,000 as emoluments of the manager.

* Reference No 393/B 5 (2) of 1951-52. 25th March 1953

Held, that where an assessee claims an exemption of an amount, on the ground of its being an expenditure falling under s 12 (2) (XV) of the Hyderabad Excess Profits Tax Act, the burden of proving facts in that connection is on the assessee. It is not necessary for the Income-Tax Tribunal to challenge the validity or otherwise of the agreement or to consider the question whether the amount was actually paid or not If without challenging either the validity of the agreement or the factum of payment, the Income-Tax Tribunal considered the amount paid as not being reasonable or wholly or exclusively expended for the purposes of the business, it can disallow the whole or so much of such expenditure as in its opinion is in excess of the amount reasonably necessary for the purposes of the business.

In the present case, the Income-Tax Tribunal was correct in holding that the considerations enumerated in the preamble of the agreement for paying the remuneration were insufficient It was not shown by the assessee that the business could not be run without the services of the manager, nor that he could get the same or similar remuneration elsewhere, that the manager had any particular technical skill by reason of which his employment at high remuneration was necessary for the conduct of the business. Besides, the entire earnings of the factory were not due to the skill and efficiency of the manager alone but due to the skill of the workers and the machines also. The obligations of the manager under the service agreement were unreal. Taking all the factors into consideration the Income-Tax Tribunal was entitled to the view that the remuneration was not reasonable having regard to the nature of the business and that at any rate it was out of all proportion to the services which the employee was capable of rendering. This finding is a question of fact and the Tribunal had sufficient basis for coming to that conclusion.

Commissioner of Income-Tax, West Bengal v. *Calcutta Agency Ltd., 1951 Supreme Court 108*

Jethabhai Hirji and Co., v. *Commissioner of Income-Tax, Bombay City, (1949) 17 I.T.R 533*

Aspro Ltd, v. *Commissioner of Taxes, 1 I.T R. 161*

relied on.

C. Sitharamiah, *Advocate* for Petitioner.

N. Narasimha Iyengar, *Advocate* for Respondent.

ORDER

P. JAGANMOHAN REDDY, J.— We had directed the Income-Tax Tribunal at Bombay by our order of the 8th August, 1952, to state a case upon two questions, viz.,

(1) Whether the Tribunal was right in law in disallowing the sum of Rs. 1,25,482 paid to the Manager for the year 1357 F. as an expenditure not laid out or expended wholly or exclusively for the purpose of the assessee's business?

(2) Whether the Tribunal is correct in law in arbitrarily fixing the amount of Rs. 36,000 as emoluments, including

[illegible] Deccan [illegible] Factory
v.
[illegible] Income-Tax, Hyderabad
—
M A Aziz, J.
&
P J Rao, J
—

the salary of the General Manager and further holding that any payment beyond Rs 36,000 was not a business expenditure?

The Income-Tax Tribunal has in compliance with the aforesaid order stated a case, from which it appears that the Hyderabad Deccan Cigarette Factory belonging to the late Abdul Sattar was being run since 1343 F. by his two heirs, namely, by his widow Salim Khatoon and his daughter Abida Khatoon, with the assistance of Gulam Hyder Khan, the father and grandfather of the widow and daughter respectively. During the life time of Abdul Sattar, the manager of the company was paid Rs. 1,000 per month, but on his death Gulam Hyder Khan who was appointed as manager was being paid a salary of Rs. 500 per month which was raised to Rs. 1,000 per month a few years later. In the year of assessment, 1357 F. the assessee returned an income of Rs. 5,19,558 in respect of the factory, but the Income-Tax Officer computed the amount at Rs. 6,49,148. The Appellate Officer, however, reduced the factory income by Rs. 33,928 which was maintained by the Tribunal in appeal. In assessing this amount the salary of Rs. 1,000 per month paid to Gulam Hyder Khan was allowed as an expense, but the assessee claimed over and above this amount a deduction of Rs. 1,25,482 as four annas share in the net profits of the factory business which was said to be payable to Gulam Hyder Khan by, and under, an agreement dated 28th Bahaman, 1357 F. entered into between the assessee and the said Gulam Hyder Khan. It is with respect to this amount that the assessee has come up before us on an application under sub-s. (2) of s. 82 of the Hyderabad Income-Tax Act, on the Tribunal refusing to state a case on an application under sub-s. (1) of s. 82.

The Appellate Tribunal in stating a case has annexed a copy of the service agreement referred to above, the preamble of which runs as follows:

> "(a) Whereas Gulam Hyder Khan has been working since 21st Amardad, 1343 F. as the General Manager and *Mukhtar-e-am* of the business run in the name of the Hyderabad Deccan Cigarette Factory owned by the parties of the first part;
>
> (b) Whereas due to the industry and efficient management of the said Gulam Hyder Khan the employers have been making good profits since 1343 F;
>
> (c) Whereas the said Gulam Hyder Khan has been asking from a very long time to give him a share in the profits of

the said factory as the entire profits earned by the Factory are due to the employee's skilful and efficient management;

(d) And whereas the employers are *purdah nishin* ladies and it is not possible for them to actively engage themselves in the daily routine and management of the business;"

The operative portion of the agreement is in these terms:

"The said Gulam Hyder Khan shall receive a monthly remuneration of Rs. 1,000 and a share of four annas in the net profits of the business, after charging all business expenditure including the monthly remuneration paid to the said employee, and also after charging any donations and charities whatever is given with full consent and approval of both the employers and the employee."

The Income-Tax Officer in the course of his order observed: "One of the considerations for increasing the emolument is stated to be the old age of the employee and the service rendered by him so far. This is indeed not a sound reason for increasing the emoluments in excess of the monthly remuneration of Rs. 1,000 to the tune of Rs. 1,25,482 in the accounting year. The said emyloyee is no other than the father of Salim Khatoon, one of the said partners of the firm and has been looking after the business for the last 12 years. I do not think that any consideration should be given to the employee in the accounting year for his past services, and this agreement, in my opinion, is not so much to the services he rendered to the factory as to the relationship with the alleged partners." The Deputy Commissioner, while maintaining the view point of the Income-Tax Officer, further observed that the recipient did not know English. Dealing with the contention that the Manager supervised the work of the business and also purchased tobacco from Guntur and other places, the Deputy Commissioner expressed the view that the progress of the factory was due to the skill of the workmen and the work of the machines and it cannot be said that the profits of over three lakhs were earned through the personal exertions of the recipient. Having regard to the qualifications and the actual work done by Gulam Hyder Khan the salary of Rs. 1,000 paid to him was quite normal. The Tribunal, however, considered that on the face of the service agreement a share of four annas in the rupee of the net profits was out of all proportion to the work done by Gulam Hyder Khan and that it was not impressed by the argument that an agreement for a higher remuneration was not entered into

[illegible]
v
The Commissioner of Income-Tax, Hyderabad
M. A. Venkata Rao, J. & P. J. Reddy, J.

called by reason of the minority of Abida Khatoon. It further held that there is no evidence that Gulam Hyder Khan threatened to leave the ladies or that he could have got elsewhere the terms as alleged to have been granted under the service agreement or that a manager of the concern of the size of the Cigarette Factory got such higher lucrative terms from any other firm. Having regard to the remuneration paid to the Assistant Manager in 1357 F., i. e., Rs. 750 per month and Rs. 25,000 as flavouring charges, the Tribunal allowed in all Rs. 36,000 as a reasonable remuneration to the manager who was the Chief Executive of the Factory, as an expenditure laid out or expended wholly and exclusively for the purpose of the assessee's business.

The deduction claimed by the assessee is under s.12 (2)(xv) of the Hyderabad E.P.T. Act (s. 10 (2) (xv) of the Indian Income-Tax Act), which is as follows:

> "Any expenditure (not being in the nature of a capital expenditure or personal expense of the assessee) laid out or expended wholly and exclusively for the purposes of such business, profession or vocation."

It has been observed by the Supreme Court in the case of Commissioner of *Income-Tax, West Bengal* v. *Calcutta Agency Ltd.*, 1951 Supreme Court 108, that where the assessee claims an exemption of an amount, on the ground of its being an expenditure falling under s. 10 (2) (xv), the burden of proving the necessary facts in that connection is on the assessee. It is not necessary for the Income-Tax Tribunal to challenge the validity or otherwise of the agreement or consider the question whether the amount was actually paid or not. If without challenging either the validity of the agreement or the factum of payment, the Income-Tax Tribunal considered the amount paid as not being reasonable or wholly or exclusively expended for the purposes of the business, it can disallow the whole or so much of such expenditure as in its opinion is in excess of the amount reasonably necessary for the purposes of the business. In *Jethabhai Hirji and Co.* v. *Commissioner of Income-Tax, Bombay City*, (1949) 17 I.T.R. 533, Chagla, C. J. dealing with the arguments of Sir Jamshedji Kanga, (which are the same as those addressed before us by Mr. Sitharamiah, Advocate for the assessee) that it is for the employer to determine what remuneration he should pay for the services rendered to him by an employee and that the Income-Tax Officer could never be in a position to judge as to how and in what manner the employer should remunerate his employees, observed

following the principles laid down by the Privy Council in *Aspro Ltd.*, v. *Commissioner of Taxes*, 4 I.T.R. 464, as follows:

> "Section 10 (2) (xv) of the Indian Income-Tax Act, 1922, requires that whatever amount he pays to his employee must be paid wholly and exclusively for the purposes of his business, and it is for the Income-Tax Officer to decide whether any remuneration paid by the employer to his employee was wholly and exclusively expended for the purpose of his business. It is erroneous to contend that as soon as an assessee has established two facts, viz., the existence of an agreement between an employer and an employee and the fact of actual payment, no discretion is left to the Income-Tax Officer except to hold that the payment was made wholly and exclusively for the purposes of the business. Although the payment might have been made and although there might be an agreement in existence, it would be open to the Income-Tax Officer to take into consideration various factors which would go to show whether the amount was paid as required by the section."

In that case, the assessee employed two persons to attend to his branch business on salaries of Rs. 125 and 111. Later, he agreed to pay to each of these employees a commission of 20 per cent on the net profits of the branch in addition to their respective salaries and pursuant to this agreement each employee was paid Rs. 6,000. The Income-Tax Officer considered this claim and allowed only a sum of Rs. 1,000 and the balance of Rs. 11,000 was disallowed by him. The Tribunal came to the conclusion that the sum of Rs. 11,000 was rightly disallowed by the Income-Tax Officer, as according to the Income-Tax Officer the amount was not wholly and exclusively expended for the purposes of the assessee's business. In coming to this conclusion, the Tribunal considered all the evidence and all the factors placed before it. Mr. Sitharamaiah contends that in that case an opportunity was given to the employees to file affidavits in order to satisfy that these two employees performed extra work in order to merit so large a sum as Rs. 6,000 each, but in this case no such opportunity has been given. This contention, in our view, has no force, as the burden of establishing facts necessary for the Income-Tax authorities in coming to the conclusion that the amount claimed was wholly and exclusively expended for the purposes of the business, is upon the assessee and it was for the assessee to have established these facts to the satisfaction of the Income-Tax authorities. Now what are the facts and circumstances that the assessee sets forth in this case? A reference to the

The Hyderabad Deccan Cigarette Factory
v.
The Commissioner of Income-Tax, Hyderabad

M. A. Ansari, J.
&
P. J. Reddy, J

preamble of the agreement set out above would show that the following considerations were taken into account for paying the remuneration claimed as deduction: (a) that shri Gulam Hyder Khan was working since Amardad 1343 F. as the General Manager and *Mukhtar-e-am* of the business and that due to his industry and efficient management the employers have been making good profits since that date; (b) that the entire profits earned by the factory are due to the skill and efficient management of Gulam Hyder Khan; (c) that the employers are *purdah nishin* ladies and it is not possible for them to actively engage themselves in the daily routine and management of the business; and (d) that the age of the employee, the services rendered by him so far and the necessity of his continuing as an employee in future. The aforesaid considerations set out in the preamble for paying the amount have been held to be insufficient to allow the deduction, in view of the absence of proof that the factory could not be run at all without the services of the employee. The Tribunal came to the conclusion that the remuneration sought to be deducted was for past services and that at any rate it was not shown that the business could not be run without the services of Shri Gulam Hyder Khan, nor has it been shown that he would get the same or similar remuneration elsewhere. It was not alleged that the employee had any particular technical skill by reason of which his employment at high remuneration was necessary for the conduct of the business. The contention that the entire earnings of the factory were due to the skilful and efficient management of the employee was also quite properly negatived on the ground that it was the skill of the workmen and the machines which contributed to the earning of the profits and that it cannot be said that the services of the Manager are alone responsible for the earning of profits of the company. Further, the obligations of the employee under the service agreement are very unreal, namely, that he shall diligently and honestly devote his full time to the business of the employers, that he shall not act in any manner prejudicial to the interest of the employers and shall not sell or dispose off or deal otherwise with the property and assets belonging to the company, nor assign, transfer or deal otherwise with his interest in the factory under any circumstances whatsoever. These obligations appear to us to be either to pertain ordinarily to the duties of an employee or are not consistent with the status of an employee. It is somewhat strange to suggest that an employee should not sell, dispose off or deal otherwise with the properties or assets belonging to the factory which he as an employee cannot do. In our view, the Income-Tax Tribunal was entitled to the view that the remuneration was not

reasonable having regard to the nature of the business and that at any rate it was out of all proportion to the services which the employee was capable of rendering. This finding is a question of fact and in our view the Income-Tax Tribunal had sufficient basis for coming to the conclusion which they did.

There is no substance in the argument of the learned advocate for the assessee that there was no basis for fixing Rs. 36,000. It was, in our view, open to the Income-Tax authorities to have rejected the entire claim on the ground that the assessee has not shown to their satisfaction that the amount paid was necessary for the purposes of the business but the Tribunal, having regard to the highest salary paid to an executive officer in the Government, fixed the remuneration at Rs. 3,000 per month and allowed Rs 36,000. In this view of the matter, our answer to the questions 1 and 2 of the reference is in the affirmative. The assessee will pay the costs of this reference.

Petition dismissed.

IN THE SUPREME COURT OF INDIA

Before Mr. Patanjali Sastri, Chief Justice,
Mr. Justice Bijan Kumar Mukherjea,
Mr. Justice Sudhi Ranjan Das,
Mr. Justice Ghulam Hasan and
Mr. Justice N. H. Bhagwati

HABEEB MOHAMED .. .. APPELLANT-PETITIONER*

v.

THE STATE OF HYDERABAD .. .. RESPONDENT

Special Tribunals (Termination) and Special Judges (Appointment) Regulation—Provisions of the Regulation contravening the Hyderabad Criminal Procedure Code—Inauguration of the Constitution of India—Infringement of art. 14 of the Constitution—Legality of trial and conviction under the Regulation—Constitution of India, art. 13—Scope.

It was contended on behalf of the appellant-petitioner that the procedure for trial prescribed by Regulation X of 1359 F. deviated to a considerable extent from the normal procedure laid down by the Hyderabad Criminal Procedure Code and deprived the accused of substantial benefits to which otherwise he would have been entitled; the Regulation became void under

*Criminal Appeal No. 43 of 1952 and Petition No. 173 of 1952. 30th March 1953.

Habeeb Mohamed v. The State of Hyderabad

art. 13 (1) of the Constitution on and from the 26th January 1950 and the conviction and sentences resulting from the procedure thus adopted must, therefore, be held illegal and inoperative.

Held, that the impugned Regulation was a pre-Constitution statute. In determining the validity or otherwise of such legislation on the ground of any of its provisions being repugnant to the equal protection clause, two principles will have to be borne in mind Firstly, the Constitution has no retrospective effect and even if the law is in any sense discriminatory, it must be held valid for all past transactions and for enforcements of rights and liabilities accrued before the coming into force of the Constitution. Secondly, art. 13 (1) of the Constitution does not necessarily make the whole statute invalid even after the advent of the Constitution. It invalidates only those provisions which are inconsistent with the fundamental rights guaranteed under Part III of the Constitution. The statute becomes void only to the extent of such inconsistency but otherwise remains valid and operative. The mere fact that the trial was continued even after 26th January 1950 under the same Regulation would not necessarily render the subsequent proceedings invalid. All that the accused could claim is that what remained of the trial must not deviate from the normal standard in material respects, so as to amount to a denial of the equal protection of laws within the meaning of art. 14 of the Constitution. For the purpose of determining whether the accused was deprived of such protection, it is to be seen whether after eliminating the discriminatory provisions in the Regulation, it was still possible to secure to the accused substantially the benefits of a trial under the ordinary law and if so, whether that was actually done in the particular case.

In the present case, the Special Judge took cognizance of the case prior to the advent of the Constitution and was therefore lawfully seized of the case and the appointment of a Special Judge was not in itself an equality in the eye of law. As regards the absence of committal proceedings, even under the Hyderabad Criminal Procedure Code the committal proceeding is not an indispensable preliminary to a sessions trial. If the committal proceeding is left out of account as not being compulsory and its absence did not operate to take away the jurisdiction of the Special Judge to take cognizance of the case before the Constitution, the difference between warrant procedure prescribed by the impugned Regulation and sessions procedure applicable under general law is not at all substantial, and the minor differences would not bring the case within the mischief of art. 14 of the Constitution. As regards the right of revision and transfer, the word 'sentence' occurring in s. 8 of the Regulation means the final or definitive pronouncement of the Criminal Court as opposed to an 'order', interlocutory or otherwise, where no question of infliction of any sentence is involved. Therefore, a revision against any order which has not ended in a sentence is not interdicted by the present Regulation nor has the right of applying for transfer which has no reference to a sentence, been touched at all. What has been taken away from an accused is in the first place the right of revision against non-appealable sentences and in the second place, the provisions relating to confirmation of sentences. The first one is immaterial in the present case as no non-appealable sentence is passed. The provision relating to absence of confirmation of sentence is inoperative but severable from the section and inspite of it the accused can insist on the rights provided for under the general law The trial or conviction of the accused is not affected in any way by reason of the withdrawal of the provision relating to confirmation of sentences in the Regulation. As regards the contention that under

s. 5. (b) of the Regulation the delegatee is to be mentioned by name has no substance. The delegatee can certainly be described by reference to his official designation and the authority may be vested in the holder of a particular office for the time being and it is quite a proper and convenient way of delegating the powers.

In this view of the matter, the trial and conviction of the accused under the above Regulation cannot be held illegal as infringing the equal protection clause embodied in art. 14 of the Constitution.

Syed Qasim Razvi and others v. *The State of Hyderabad, I.L.R [1953] Hyd. 211.*

followed.

Appeal by Special Leave granted by the Supreme Court on the 11th May 1951 from the judgment and order dated the 11th December 1950 of the High Court of Hyderabad in Criminal Appeal No. 598 of 1950.

A. A. Peerbhoy and Dada Changi, Advocates,
instructed by Rajinder Narain, Agent for Appellant-Petitioner.

V. Rajaram Iyer, Advocate-General of Hyderabad,
(R. Gangapathy Iyer, Advocate with him)
instructed by G. H. Rajadhyaksha, Agent for Respondent.

JUDGMENT

MUKHERJEA, J.—The appellant before us, who in the year 1947 was Revenue Officer in the District of Warangal within the State of Hyderabad, was brought to trial before the Special Judge of Warangal appointed under Regulation X of 1359 F. on charges of murder, attempt to murder, arson, rioting and other offences punishable under various sections of the Hyderabad Penal Code. The offences were alleged to have been committed on or about the 9th of December 1947 and the First Information Report was lodged, a considerable time afterwards, on 31st January 1949. On 28th August 1949 there was an order in terms of s. 3 of the Special Tribunal Regulation No. V of 1358 F. which was in force at that time, directing the appellant to be tried by the Special Tribunal (A). The accused being a public officer, the sanction of the Military Governor was necessary to prosecute him and this sanction was given on 20th September 1949. On 13th December 1949, a new Regulation. being Regulation No. X of 1359 F. was passed by the Hyderabad Government which ended the Special Tribunals created under the previous Regulation on and from 16th December 1949; and consequently upon such termination provided for the appointment, power and procedure of Special Judges. Section 4 of the Regulation authorised the Chief Minister to appoint,

Habeeb Mohamed v. The State of Hyderabad — Mukherjea, J.

after consulting the High Court, as many Special Judges as may from time to time be required for the purpose of s. 5. Section 5 (1) laid down that every Special Judge shall try—

> (a) such offences of which the trial was immediately before the 16th December 1949 pending before a Special Tribunal deemed to have been dissolved on that date, and are made over to him for trial by the Chief Minister or by a person authorised by the Chief Minister in this behalf; and
>
> (b) such offences as are after the commencement of this Regulation made over to him for trial by the Chief Minister or by a person authorised by the Chief Minister in this behalf.

On 5th January 1950 the case against the appellant was made over to Dr. Lakshman Rao, a Special Judge of Warangal, who was appointed under the above Regulation under an order of the Civil Administrator, Warangal, to whom authority under s. 5 of the Regulation was delegated by the Chief Minister and on the same date the Special Judge took cognizance of the offences. The trial commenced on and from 11th February 1950 and altogether 21 witnesses were examined for the prosecution and one for the defence. The Special Judge, by his judgment, dated the 8th of May 1950, convicted the appellant of all the offences with which he was charged and sentenced him to death under s. 243 of the Hyderabad Penal Code (corresponding to s. 302 of the Indian Penal Code) and to various terms of imprisonment under ss. 248, 368, 282 and 124 of the Code of Hyderabad (which correspond respectively to ss. 307, 436, 342 and 148 of the Indian Code). Against this judgment the appellant took an appeal to the High Court of Hyderabad and the appeal was first heard by a Division Bench consisting of Shripat Rao and S. Ali Khan, JJ. On 29th September 1950, the learned Judges delivered differing judgments, Shripat Rao, J. taking the view that the appeal should be dismissed, while the other learned Judge expressed the opinion that the appeal ought to be allowed and the accused acquitted. The case was then referred to Mr. Justice Manohar Prasad as a third Judge and by his judgment dated the 11th of December 1950, the learned Judge agreed with the opinion of Shripat Rao, J. and dismissed the appeal upholding the conviction and sentences passed by the Special Judge. The appellant then presented an application for leave to appeal to this Court. That application was rejected by the High Court of Hyderabad, but special leave to appeal was granted by this

Court on 11th May 1951 and it is on the strength of this special leave that the appeal has come before us.

The present hearing of the appeal is confined to certain constitutional points which have been raised by the appellant attacking the legality of the entire trial which resulted in his conviction on the ground that the procedure for trial laid down in Regulation X of 1359. F. became void after the 26th of January 1950 by reason of its being in conflict with the equal protection clause embodied in art. 14 of the Constitution. These grounds have been set forth in a separate petition filed by the appellant under art. 32 of the Constitution and following the procedure adopted in the case of *Qasim Razvi* (Case No. 276 of 1951), we decided to hear arguments on the constitutional questions as preliminary points in the appeal itself. Whether the appeal would have to be heard further or not, would depend on the decision which we arrive at in the present hearing.

The substantial contention put forward by Mr. Peerbhoy, who appeared in support of the appeal, is that as the procedure for trial prescribed by Regulation X of 1359 F. deviated to a considerable extent from the normal procedure laid down by the general law and deprived the accused of substantial benefits to which otherwise he would have been entitled, the Regulation became void under art. 13 (1) of the Constitution on and from the 26th of January 1950. The conviction and the sentences resulting from the procedure thus adopted must, therefore, be held illegal and inoperative and the judgment of the Special Judge as well as of the High Court should be quashed. The other point raised by the learned counsel is that the making over of the case of the appellant to the Special Judge was illegal as the authority to make over such cases was not properly delegated by the Chief Minister to the Civil Administrator in the manner contemplated by s. 5 of the Regulation.

As regards the first point, it is to be noted at the outset that the impugned Regulation was a pre-Constitution statute. In determining the validity or otherwise of such legislation on the ground of any of its provisions being repugnant to the equal protection clause, two principles would have to be borne in mind, which were enunciated by the majority of this Court in the case of *Qasim Razvi* v. *The State of Hyderabad*, Case No. 276 of 1951. decided on the 19th of January 1953, where the earlier decision in *Lachman Das Kewalram* v. *The State of Bombay*, 1952 S.C.R. 710, was discussed and explained. Firstly, the Constitution has no retrospective effect and even if the law

Hab e' M h a ed
v.
The S a e of
Hy le bad
Mukh e , J.

is in any sense discriminatory, it must be held to be valid for all past transactions and for enforcement of rights and liabilities accrued before the coming into force of the Constitution. Secondly, art. 13 (1) of the Constitution does not necessarily make the whole statute invalid even after the advent of the Constitution. It invalidates only those provisions which are inconsistent with the fundamental rights guaranteed under Part III of the Constitution. The statute becomes void only to the extent of such inconsistency but otherwise remains valid and operative. As was said in Qasim Razvi's case, the fact that "trial was continued even after 26th January 1950 under the same Regulation would not necessarily render the subsequent proceedings invalid. All that the accused could claim is that what remained of the trial must not deviate from the normal standard in material respects, so as to amount to a denial of the equal protection of laws within the meaning of art. 14 of the Constitution. For the purpose of determining whether the accused was deprived of such protection, we have to see first of all whether after eliminating the discriminatory provisions in the Regulation, it was still possible to secure to the accused substantially the benefits of a trial under the ordinary law; and if so, whether that was actually done in the particular case."

As has been stated already, the Special Judge took cognizance of this case on the 5th January 1950 which was prior to the advent of the Constitution. It must be held, therefore, that the Special Judge was lawfully seized of the case, and it is not possible to say that the appointment of a Special Judge was in itself an inequality in the eye of the law. The trial undoubtedly commenced from the 11th of February, 1950, that is to say, subsequent to the coming into force of the Constitution, and the question that requires consideration is, whether the procedure that was actually followed by the Special Judge acting under the impugned Regulation did give the accused the substance of a normal trial, or in other words, whether he had been given a fair measure of equality in the matter of procedure?

Mr. Peerbhoy lays stress on two sets of provisions in the impugned Regulation which, according to him, differentiate the procedure prescribed in it from that laid down under the ordinary law. The first set relates to the elimination of the commital proceeding and the substitution of warrant procedure for the sessions procedure in the trial of offences. The other set of provisions consists of those which deny to the accused the rights of revision and transfer and withdraw from him the safeguards relating to confirmation of sentences. The first branch of the contention, in our opinion, is unsustainable having regard to

our decision in *Qasim Razvi's* case. It was pointed out in that case that under the Hyderabad Criminal Procedure Code the committal proceeding is not an indispensable preliminary to a sessions trial. Under s. 267 A of the Hyderabad Criminal Procedure Code, the Magistrate is quite competent, either without recording any evidence or after recording only a portion of the evidence, to commit an accused for trial by the sessions court, if in his opinion, there are sufficient grounds for such committal. If the committal proceeding is left out of account as not being compulsory, and its absence did not operate to take away the jurisdiction of the Special Judge to take cognizance of the case before the Constitution, the difference between a warrant procedure prescribed by the impugned Regulation to be followed by the Special Judge after such cognizance was taken and the sessions procedure at that stage applicable under the general law is not at all substantial, and the minor differences would not bring the case within the mischief of art. 14 of the Constitution. This question having been already decided in *Qasim Razvi's* case, it is not open for further arguments in the present one.

With regard to the other set of provisions, the contention of Mr. Peerbhoy is based entirely upon the language of s. 8 of the Regulation. In our opinion, the interpretation which the learned counsel seeks to put up on the section is not quite correct, and it seems to us that not only the right of an accused to apply for transfer of his case has not been taken away by this section, but the right of revision also has been left unaffected except to a small extent.

Section 8 of the Regulation X of 1359 F. is in these terms:

> "All the provisions of s. 7 of the said Regulation shall have effect in relation to sentences passed by a Special Judge as if every reference in the said Regulation to a Special Tribunal included a reference to a Special Judge."

The expression "said Regulation" means and refers to Regulation V of 1358 F. and s. 7 of the said Regulation provides *inter alia* that "there shall, save as hereinbefore provided, be no appeal from any order or sentence passed by a Special Tribunal, and no court shall have authority to revise such order or sentence or to transfer any case from Special Tribunal or have any jurisdiction of any kind in respect of any proceeding before a Special Tribunal and no sentence of a Special Tribunal shall be subject to or submitted for confirmation by any authority whatsoever." It will be noticed that what s. 8 of the impugned

Habeeb Mohamed v. The State of Hyderabad — Mukherjea, J. —

Regulation does, is to incorporate, not the whole of s. 7 of the previous Regulation, but only such portion of it as relates to sentences passed by a Special Judge. By 'sentence' is meant obviously the final or definitive pronouncement of the criminal court which culminates or ends in a sentence as opposed to an 'order,' interlocutory or otherwise, where no question of infliction of any sentence is involved. The scope of s. 7 of the earlier Regulation is thus much wider than that of present s. 8 and all the limitations of the earlier statute have not been repeated in the present one. The result, therefore, is that revision against any order which has not ended in a sentence is not interdicted by the present Regulation, nor has the right of applying for transfer, which has no reference to a sentence, been touched at all. These rights are expressly preserved by s. 10 of the present Regulation, which makes the Code of Criminal Procedure applicable in all matters except where the Regulation has provided otherwise. Reading s. 8 of the present Regulation with s. 7 of the earlier one, it may be held that what has been taken away from an accused, is, in the first place the right of revision against non-appealable sentences, and in the second place, the provisions relating to confirmation of sentences. The first one is immaterial for our present purpose, as no question of any non-appealable sentence arises in the case before us. The second is undoubtedly a discriminatory feature and naturally Mr. Peerbhoy has laid considerable stress upon it.

Section 20 of the Hyderabad Criminal Procedure Code lays down the rule relating to confirmation of sentences in the following manner:

> Every Sessions Judge may pass any sentence authorised by law, but such sentence shall not be carried into effect until
>
> (1) in the case of a sentence of 10 years' imprisonment or more, the appropriate Bench of the High Court;
>
> (2) in the case of life imprisonment, the Government; and
>
> (3) in the case of death sentence, H. E. H. the Nizam,
>
> shall have assented thereto. Section 302 provides that when a sessions court has passed a sentence of death or of life imprisonment or of imprisonment exceeding 10 years, the file of the case shall be forwarded to the High Court and the execution of the sentence stayed until *manjuri* is given in accordance with s. 20. Section 307 further provides that when the High Court has affirmed a death sentence or sentence of life imprisonment, then

its opinion together with the file of the case shall be forwarded for ratification to the Government within one week and the sentence shall not be carried into effect until after the assent thereon of H.E.H. the Nizam in the case of death sentences and of the Government in the case of sentences of life imprisonment. Mr. Peerbhoy's complaint is that the sentence imposed upon his client has, in the present case, neither been confirmed by the High Court, nor by H.E.H. the Nizam. This, he says, is a discrimination which has vitally prejudiced his client and does afford a ground for setting aside the sentence in its entirety.

It admits of no dispute that s. 8 of Regulation X of 1359 F. must be held to be invalid under arts. 13 (1) and 14 of the Constitution to the extent that it takes away the provision relating to confirmation of sentences as is contained in the Hyderabad Criminal Procedure Code. This, however, is a severable part of the section and being invalid, the provisions of the Hyderabad Criminal Procedure Code with regard to the confirmation of sentences must be followed. Those provisions, however, do not affect in any way the procedure for trial laid down in the Regulation. All that s. 20 of the Hyderabad Criminal Procedure Code lays down is that sentences of particular description should not be executed unless assent of certain authorities to the same is obtained. The proper stage, therefore, when this section comes into operation is the stage of the execution of the sentence. The trial or conviction of the accused is not affected in any way by reason of the withdrawal of the provision relating to confirmation of sentences in the Regulation. The withdrawal is certainly inoperative and inspite of such withdrawal, the accused can insist on the rights provided for under the general law.

In the case before us the records show that no reference was made by the Special Judge after he passed the sentence of death upon the appellant in the manner contemplated by s. 307 of the Hyderabad Code, which corresponds to s. 374 of the Indian Criminal Procedure Code. There was, however, an appeal preferred by the accused and the entire file of the case came up before the High Court in that connection. As said already, the Division Bench, which heard the appeal, was divided in its opinion and consequently no question of confirmation of the death sentence could or did arise before that Bench. The question was, however, specifically raised towards the conclusion of the arguments before the third Judge, to whom it was referred; and it is significant to note that sometime before that a Full Bench of the Hyderabad High Court had decided that the

[illegible] d
v.
The State of
Hyderabad
—
Mukherjea J.
—

provision in the Regulation relating to confirmation of sentences was void and inoperative and consequently, in spite of the said provision, the sentences were required to be confirmed in accordance with the general law. The question was then raised whether the confirmation was to be made by the third Judge alone or it had to be done by the two Judges who agreed in dismissing the appeal. Mr. Justice Manohar Prasad decided that as the whole case was referred to him, he alone was competent to make the order for confirmation of the death sentence and he did actually confirm it by writing out in his own hand the order passing the sentence of the death according to the provision laid down in the Hyderabad Code. Mr. Peerbhoy contends that this confirmation was illegal and altogether invalid as not being made in conformity with the provisions of the Hyderabad Code We do not want to express any opinion on this point at the present moment. There appears on the face of the record an order for confirmation of the death sentence made by a Judge of the High Court. If this order is not in conformity with the provisions of law, the question may be raised before this Court when the appeal comes up for hearing on its merits. This is, however, not a matter which affects the constitutional question with which only we are concerned at the present stage.

Under s. 20 of the Hyderabad Code, as mentioned above, a death sentence could not be executed unless the assent of H.E.H. the Nizam was obtained. Mr. Peerbhoy points out that this has not been done in the present case. To that the obvious reply is that consent of H.E.H. the Nizam is necessary only before the sentence is executed, and that stage apparently has not arrived as yet. The final judgment of the High Court in this case was passed on 11th December 1950. There was an application for leave to appeal presented by the accused immediately after that date and this application was rejected on 2nd January 1951. On the 5th of February 1951 an application for special leave was made to this Court and the execution of the death sentence was stayed during this period under orders of the High Court itself. The special leave was granted by this Court on 11th May 1951 and the carrying out of the death sentence has been stayed since then under our orders, pending the disposal of the appeal. The question as to whether any further confirmation by H.E.H. the Nizam is necessary could only arise if and when the death sentence passed by the courts below is upheld by this Court. Mr. Peerbhoy points out that since the 1st of April 1951 the Indian Criminal Procedure Code has been introduced in the State of Hyderabad and there is no power in

the Nizam now to confirm a sentence of death, although such confirmation was necessary at the time when the sentence was pronounced both by the Special Judge as well as by the High Court on appeal. We do not think that it is at all necessary for us at the present stage to discuss the effect of this change of law. If the assent of the Nizam to the execution of a death sentence is a matter of procedure, it may be argued that the procedural law which obtains at the present moment is the proper law to be applied. On the other hand, if it was a question of substantive right, it may be open to contention that the law which governed the parties at the date when the trial began is still applicable. We are, however, not called upon to express any opinion on this point and we deliberately decline to do so. We also do not express any opinion as to whether the rights which could be exercised by the Nizam under s. 20 of the Hyderabad Criminal Procedure Code were appurtenant to his prerogative as a sovereign or were statutory rights exercisable by the person designated in the statute. These matters may be considered when the appeal comes up for final hearing on the merits. Our conclusion is that there has not been any discrimination in matters of procedure in this case which can be said to have affected the trial prejudicially against the accused and the accused is not entitled to have his conviction and sentence set aside on that ground.

The other question raised by the appellant relates to delegation of the authority by the Chief Minister to make over cases for trial by the Special Judge. Mr. Peerbhoy lays stress on s. 5 (b) of the Regulation which speaks of offences being "made over to the Special Judge for trial by the Chief Minister or by a person authorised by the Chief Minister in this behalf," and it is argued that this section requires that the delegatee is to be mentioned by name. What the Chief Minister has done is that he issued a notification authorising all Civil Administrators of the districts to exercise within their respective jurisdictions the powers of the Chief Minister under the said section. This, it is argued, is not in compliance with the provisions of the section. We do not think there is any substance in this contention. The delegatee can certainly be described by reference to his official designation and the authority may be vested in the holder of a particular office for the time being. This, we think, is quite a proper and convenient way of delegating the powers which are exercisable by the Chief Minister. In our opinion, the constitutional points raised by Mr. Peerbhoy fail. The application under art. 32 of the Constitution is thus

Habeeb Mohammad
v
The State of Hyderabad
Ghulam Hasan, J.

rejected and the case is directed to be posted in the usual course for being heard on its merits.

(Sd.) M. PATANJALI SASTRI, C. J.
(,,) B. K. MUKHERJEA, J.
30th March, 1953. (,,) S. R. DAS, J.
(,,) N. H. BHAGWATI, J.

GULAM HASAN, J.—I concur in the order proposed by my learned brother Mr. Justice Mukherjea that the petition under art. 32 of the Constitution be dismissed, but I deem it necessary to make a few observations in view of my dissenting judgment in Qasim Razvi's case. The majority judgment delivered by Mr. Justice Mukherjea on the 19th January, 1953, in Qasim Razvi's case while interpreting the decision in "*Lachmandas Kewalram Ahuja* v. *The State of Bombay*, 1952 S.C.R. 710" laid down the principle that the mere fact that some of the provisions of the impugned Regulation are discriminatory on the face of it, is not sufficient to render the trial and the conviction void under art. 14, read with art. 13 (1), of the Constitution and that in such cases where the trial is continued after the 26th January, 1950, under the impugned Regulation, it is necessary to see whether the procedure followed after the material date was such as deprived the accused of the equal protection of laws within the meaning of art. 14 of the Constitution and that if the accused under such procedure received substantially the benefits of the trial under the ordinary law, the trial and conviction cannot be held as void and illegal. I take it that the majority decision is binding and that the principle enunciated by the majority is no longer open to question. With this preliminary observation I must proceed to express my concurrence generally with the view taken by my learned brother Mr. Justice Mukherjea in the present case.

It is to be borne in mind that Regulation V of 1358 F. under which the Tribunal was constituted to try Qasim Razvi's case was in material respects different from Regulation X of 1359 F. under which the Special Judge tried the petitioner Habeeb Mohammad. I agree with my learned brother in holding that there was no flaw in making over the case of the petitioner for trial to the Special Judge under s. 5 (b) of the Regulation. The Special Judge took cognizance of the case before the Constitution came into force, but the entire evidence of the prosecution, unlike Qasim Razvi's case, was recorded after the 26th of January,

1950. The Regulation in question was challenged before us as being void under art. 14, read with art. 13 (1), of the Constitution on the following grounds:—

(1) that the Regulation excludes the committal proceedings,

(2) that the procedure of the Sessions trial is replaced by the warrant procedure,

(3) that there is no right of transfer,

(4) that there is no revision,

(5) that the right of confirmation by the Nizam in case of sentences of death has been negatived.

As regards the first two grounds, Mr. Justice Mukherjea, following the view taken in Qasim Razvi's case, has held that under s. 267 (A) of the Hyderabad Criminal Procedure Code committal proceedings are not compulsory and that there is no substantial difference between the Sessions trial and the warrant procedure which was followed in the petitioner's case. These two grounds of attack, therefore, disappear. So far as grounds Nos. (3) and (4) are concerned, I agree with Mr. Justice Mukherjea in his interpretation of s. 8 of the Regulation and hold in concurrence with the view taken by him that the right to apply for transfer has not been taken away and that the right of revision has been denied only in so far as non-appealable sentences are concerned The present is a case of murder and other serious offences which are undoubtedly all appealable.

The only discriminatory feature of the Regulation left therefore is that no sentence of a Special Tribunal shall be subject to or submitted for confirmation by any authority whatsoever contained in s. 7 (2) of Regulation V of 1358 F. which is made applicable under s. 8 of Regulation X of 1359F., in other words, that the right of the Nizam to confirm the death sentence has been taken away. This is unquestionably a valuable right available to the accused who is sentenced to death by the Sessions Judge or the High Court as the case may be. We were told by Mr. Peerbhoy, counsel for the petitioner, that no death sentence passed by the courts in Hyderabad during the last 50 years or so has ever been carried into effect and that the Nizam has always exercised this right in favour of commuting the death sentence to a sentence for life. The denial of this right in the Regulation is discriminatory on the face of it and deprives the petitioner of a valuable right. I concede, however, that this objectionable feature of the Regulation is

Bua Bi v. Khadija Begum

severable from the other parts. I further agree that the stage for the exercise of that right has not yet arisen, for the appeal of the petitioner is still pending in this Court. If the appeal is allowed or the sentence is reduced, no question of the confirmation of the death sentence by the Nizam will arise. If, however, the appeal is dismissed, it will be open to the petitioner to claim this right. It would not be desirable at this stage to express an opinion whether this right is a substantive right which vests in the petitioner or one relating to a mere matter of procedure, as that question will have to be considered and decided when the appropriate stage arrives.

I would, therefore, agree in dismissing the petition.

Petition dismissed.

APPELLATE CRIMINAL

Before Mr. Justice Mir Siadat Ali Khan

BUA BI AND ANOTHER .. .. PETITIONERS*

v.

KHADIJA BEGUM .. .. RESPONDENT

Criminal Procedure Code, s. 145 (5)—Magistrate's finding as to the non-existence of breach of peace—Order for court's custody of the disputed property pending decision of a civil court—Validity.

In proceedings under s. 145 of the Criminal Procedure Code, the Magistrate, after recording evidence, came to the conclusion that there was no likelihood of breach of peace in respect of the land under dispute. But the Magistrate, instead of directing the restoration of the land to the petitioners from whom it was taken, ordered that the land be kept under the custody of the court till the parties get a decision from a civil court.

Held, that under s. 145 (5) the Magistrate is competent to hold, whether from the written statements of the parties or from the evidence adduced by them, that there is no likelihood of breach of peace, even though he had once found that there was likelihood of breach of peace and initiated legal proceedings on it. But when the Magistrate comes to the conclusion that there is no likelihood of breach of peace, he ceases to have jurisdiction and should forthwith determine the proceedings and order the restoration of the property to the person from whom it was taken.

The order of the Magistrate in the present case directing the property to be kept under court's custody pending the decision of a civil court is without jurisdiction and the possession of the property in dispute must be restored to the petitioners from whom it was taken.

*Criminal Revision Petitions Nos. 679 and 680 of 1951-52. 18th February 1953.

Anand Rao v. *Maruthi* 6 *Nazir-e-Osmania* 190

Anand Kishen v. *Taluqdar, Mahapalle* 5 *Nazair e-Osmani* 240 *follo wed.*

Bua Bi
v.
Khadija Begum

M. S. Ali Khan, J.

Revision against the order of the IV City Criminal Court, dated 24-9-1951 in Case No. 161/5 of 1951 on the file of that court

Jehangir Ali, Advocate for Petitioners.

Raja Bahadur Bishweshwarnath, Advocate for Respondent.

ORDER

MIR SIADAT ALI KHAN, J.—This is a revision petition in a breach of peace case. The IV Court, City Criminal Courts, by judgment dated 24th September 1951, directed that the lands be kept in the custody of the court till the parties get a decision from the Civil Court. Hence this revision petition filed by Bua Bi and Kundmir. I have heard the arguments of the learned advocates of the parties.

2. The learned advocate for the revision-petitioners argued that possession of the revision-petitioners has been admitted by the respondent, Khadija Begum. It was also admitted in the police report and has been deposed to by several witnesses of the respondent; for instance Malla Reddy, the village officer, who has deposed that for the last year or two Mussalmans had come on the land and taken possession of it. He argued further that this is what the predecessors-in-title and brother-in-law of the respondent, Khadija Begum, Jafer Ali Khan, also has deposed that he had initiated proceedings for breach of peace in which he had stated that the land in dispute was in possession of the revision-petitioners; that this was in 1356 F. and after the sale of Khadija Begum; that this shows that the sale of Khadija Begum was fictitious, for if the sale was genuine, Jafer Ali Khan would have felt no necessity and would not have initiated the breach of peace proceeding; that, however, this may be the point is clear that the predecessor-in-title of Khadija Begum has admitted the possession of the revision-petitioners even in 1356 F; that the learned Magistrate himself has held that there was no likelihood of breach of peace and that, therefore, he should have determined the proceedings forthwith and directed that the land should be restored to the party from whose possession it was taken and that as already stated above the land was taken from the possession of the revision-petitioners as is admitted in the police report and in the panchnama prepared by the bailiff.

Bua Bi
v.
Khadija Begum
M. S. A. Khan, J.

3. In reply, the learned advocate for the respondent, Khadija Begum, Raja Bahadur Biseshwarnath argued that the possession of the revision-petitioners over the whole of the land is not proved; that as laid down in A.I.R. 1952 All. 918 possession over the whole land is to be seen; that the respondent had posted a servant Abbas Ali on the land in dispute and he remained there all the while; that there is a receipt showing that the predecessors-in-title of the respondent Jaffer Ali Khan, was delivered possession of the land in dispute on 1st Azur 1355 F. that the servant mentioned above was posted from 1355; that a careful perusal of paragraph (1) of the written statement will show that the respondent did not admit therein the possession of the revision -petitioners but has only stated that the revision-petitioners taking advantage of the disturbed conditions of the time have begun to meddle unlawfully with the land in dispute; that this does not mean that they took possession of the land in dispute; that it is true that the bailiff has not mentioned that there was any hut in occupation of the servant of the respondent at the time of taking the land in the custody of the court; but that does not mean that there was no hut, as this fact has been deposed to not only by the respondent herself but by Jaffer Ali Khan and several other witnesses. The learned advocate argued further that it is not true to say that the learned Magistrate has found that there was no likelihood of breach of peace; that he has expressly found that there was a likelihood of breach of peace when he initiated proceedings under s. 145 of Indian Criminal Procedure Code; that the revision-petitioners, Bua Bi and Kundmir themselves have deposed that on behalf of the respondent Sikhs were brought to aid in the maintaining of her possession; that this is also deposed to by the revision-petitioners' own brother, Syed Mahmood, who has deposed that there was a likelihood of breach of peace and, therefore, he filed a petition to the police; and that Jaffar Ali Khan brought Sikhs with him to take possession of the land in dispute. All this will show that there was a likelihood of breach of peace and, therefore, it is utterly incorrect to say that the Magistrate has found that there was no likelihood of breach of peace.

I have carefully considered the above arguments and it is evident that as far as possession at the time of preliminary order or two months prior to it is concerned, there is no doubt that it was with the revision-petitioners. The panchnama prepared by the bailiff expressly states that the land was taken from the possession of the revision-petitioners and it has been proved by depositions of revision-petitioners' witnesses. The

allegation of the respondent that she had posted a servant there which is deposed to by Jafar Ali Khan and Abbas Ali respondent's witnesses Nos. 3 and 4; but it should be noted that Malla Reddy, respondent's witness No. 3, who is not only a village official but also owns and cultivates lands adjacent to the survey Nos. 108 and 109, now in dispute, states that he never saw any servant of the respondent posted on the land in dispute. I need not repeat that the bailiff's report also does not mention that there was any hut of Abbas Ali, servant of the respondent, and what is more, Murtuza Ali Khan, the first witness, adduced on behalf of the respondent, has expressly stated that in the very hut built by the respondent the revision-petitioner entered and took possession. This witness Malla Reddy has deposed further that Mussalmans, meaning the revision-petitioners, took possession of the land a year or two before he deposed, which means quite clearly many months prior to the preliminary order. The learned advocate argued that it was forcible possession and, therefore, could not be taken into account. There is no record to bear him out that Abbas Ali was thrown out forcibly. There remains the argument that the learned Magistrate has not found that there was no likelihood of breach of peace. In my opinion, even a cursory perusal of the judgment under revision will show that he has so found it at numerous places. The argument that when once the Magistrate finds that there is likelihood of breach of peace, he cannot, after the filing of written statements and evidence of the parties, find further that there is no likelihood of breach of peace, is untenable. 6 Nazaer-e-Osmania 100, *Anand Rao* v. *Maruti*, is clear authority on the point that when after the evidence of the parties is closed, the Magistrate is of the opinion that there is no likelihood of breach of peace, he should forthwith determine the proceedings and that the continuance of the proceedings to find the possession of a party is without jurisdiction, for the reason that, when there is no likelihood of breach of peace, there is no jurisdiction left and that it is also without jurisdiction to take evidence of actual possession. The same question was also thrashed in *Anand Kishen* v. *Talukdar, Mutpalle*, 5 Nazaer-e-Osmania 240, which is a Full Bench 5 judges case. There it has been held that:

> "Where it appears that there is no likelihood of breach of peace, the proceedings shall be terminated; that the Magistrate has so determined the proceedings but it is argued that under s. 148, sub-s. 4 of Hyderabad Criminal Procedure Code, if there is a dispute but no likelihood of

Bai B
v.
Khadi a Begum
M S. Ali Khan, J.

breach of peace, the enquiry should still continue and possession of either party shall be determined. This has been held in 22 D.L.R. 209, 14 D.L.R. 79 and 108 and 25 D.L.R. 264. But this is not correct for in s. 148 sub-s. 1, the dispute leading to a breach of peace is qualified by a dispute about land and it is only when there are both these disputes that the magistrate has jurisdiction. Hence, if there is a mere dispute over the land and it is not likely to lead to a breach of peace, there is no jurisdiction".

This is as clear as anything can be and therefore, as soon as it appears whether from the written statements of the parties or the evidence adduced by them that, there is no likelihood of breach of peace, the jurisdiction of the Magistrate comes to an end. It is evident that this may very well be after the finding of the Magistrate on a petition or a report to him that there is a likelihood of breach of peace. Hence, I do not agree with the argument of the learned advocate for the respondent that the learned Magistrate has not found that there is no likelihood of breach of peace or he could not have found that, because he had once found that there was a likelihood of breach of peace and initiated legal proceedings on it. Thus, as it is evident from the judgment under revision that the Magistrate has expressly found in so many places that there is no likelihood of breach of peace, he should have determined and closed the proceedings and should have only directed the restoration of the land in dispute to the party from whose possession it was taken. Hence, in my opinion, his order that the land should remain in the court's custody pending decision of a civil court is without jurisdiction on the authority of the above mentioned cases and also on the authority of sub-s. 5 of s. 148 Hyderabad Criminal Procedure Code or the corresponding sub-s. 5 of s. 145, Indian Criminal Procedure Code. Both these sections also lay down, whether expressly (s. 148) or by necessary implication (s. 145), the same proposition that when there is no dispute, the proceedings shall terminate and the Magistrate on the evidence adduced should direct restoration of the property in dispute to the party from whose possession it was taken. Thus, I allow this revision petition and direct restoration of the land in dispute to the possession of the revision-petitioners as it is on record that the land in dispute was taken from their possession. Copy in the other file.

Revision allowed.

EXTRAORDINARY ORIGINAL JURISDICTION

Before Mr. Justice Mohammed Ahmed Ansari and Mr. Justice P. Jagannmohan Reddy

KAYANI AND CO. .. .. .. PETITIONER*

v.

COMMISSIONER OF SALES TAX .. .. RESPONDENT

General Sales Tax Act, Hyderabad, Sch. I (1) and (3)—Bread—Meaning—Whether includes double roti, parata and shirmal—'All forms of rice'—Whether includes preparations from rice.

The petitioner applied for the issue of a writ under art. 226 of the Constitution for directing the Sales Tax Commissioner not to collect tax on double roti, parata, shirmal and on cooked rice as these articles were exempt from sales tax under Sch. I, items 1 and 3, of the Hyderabad General Sales Tax Act.

Held, that the intention of the legislature in using the term 'bread' in item 3 of Sch. I of the Act is to include all kinds of bread which are consumed by the citizens of India, whether prepared in different ways or called by different names. There is no justification for limiting the scope of the term bread to a particular kind, such as double roti The intention of the legislature is further made clear in the amended Sch. I which has been substituted by Act XXVII of 1952, where the term 'bread' includes double roti, chapathi, kulcha and shirmal. If bread only meant double roti, there was nothing to prevent the legislature from using the word 'double roti' for the word 'bread.' Nor can it be justifiably inferred that the exemption is only meant for the very limited class of citizens who consume double roti while levying the tax on vast majority of citizens who do not consume that article of food. Therefore, 'bread' includes and should include all forms of or kinds of bread which is prepared by moistening, kneading, baking, frying or roasting meal or flour with or without the addition of yeast, leaven or any other substance for puffing or lightening the article.

The word 'form' connotes a visible aspect such as shape or mode in which a thing exists or manifests itself, species, kind or variety. Therefore, 'all forms' prefixed to rice in item 1 of Sch I of the Act means all kinds or variety of rice or species of rice, such as broken rice, kichdi rice, pichodi rice or rice flour etc. but does not include cooked rice, biryani or polao or other rice preparations since articles prepared from exempted article are not exempt from taxation.

Sarfoji Rao v. *Commissioner of Sales Tax, A.I.R. 1952 Hyd. 191.*

relied on.

Seethal Pershad, Advocate for Petitioner,

N. Narasimha Iyengar, Advocate for Respondent.

* Writ Petition No, 302/5 of 1952-53. 18th March 1953.

Kay[illegible] and Co
v
Commissioner of
Sales Tax
—
M A Ansari, J.
&
P. J. Reddy, J.
—

JUDGMENT

P. JAGANMOHAN REDDY, J.— This is a petition for the issue of an appropriate writ under art. 226 of the Constitution directing the Sales Tax Commissioner not to collect tax on (a) double roti, parata and shirmal, (b) on cooked rice and (c) milk, milk products and (d) fresh eggs. The advocate for the petitioner confines his case to the first two items only as it is said that the Sales Tax Commissioner has accepted the exemptions of item Nos. (c) and (d). Even with respect to item No. 1, it appears from the return made by the assessee which is shown to us by the learned advocate for the Commissioner that exemption has only been claimed with respect to double roti, shirmal and tanur-ki-roti, but parata has not been shown in the statement. The exemption claimed is under item 3, i. e., bread and item 1, i.e., 'all cereals and pulses including all forms of rice (except when sold in sealed containers)' of Sch. I of the Hyderabad General Sales Tax Act (XV of 1950).

The first question that falls for determination is whether double roti, shirmal, parata and chapathi, etc. can be called bread. The learned advocate for the respondent states that except for double roti, the other articles are not covered by the term bread. He contends that bread which is the same as 'double roti' is prepared in the manner described in the Webster's International Dictionary, that is, it is an article of food made by baking the dough which is treated in some way to render it light or porus, as by mixing it with yeast or leaven or baking powder. We are unable to accept this contention nor are we prepared to presume that the legislature intended by the use of the word 'bread' in item 3 of Sch. I to exempt only that article of food which is prepared in European countries in the manner described in the dictionary. On the other hand, a reference to the Oxford Dictionary would show that in all European languages bread originally meant 'piece,' 'bit,' 'fragment (frustum),' which later has passed through the senses of 'piece of bread,' 'broken bread,' into that of 'bread' as a substance; while at the same time the original word for 'bread, loaf, panis' has been restricted to the undivided article as shaped and baked, the 'loaf.' When the legislature uses a term relating to any article of food, we must construe it in the sense in which it is understood in this country and not elsewhere. In fact, bread which is commonly labelled as a loaf of bread in European countries has a particular name in this country and is called a 'double roti,' thereby distinguishing it from ordinary 'roti' which is synonymous with a loaf of bread. In this

country, it is not unusual for a descriptive prefix to connote the kind of bread such as 'jawari-ki-roti,' 'bajre-ki-roti, makai-ki-roti, gheon-ki-roti, etc. In our view, the intention of the legislature is to include all kinds of bread which are consumed by the citizens of India, whether prepared in different ways or called by different names. There is no justification for limiting the scope of the term bread to a particular kind, such as 'double roti' as contended by the learned advocate for the Commissioner of Sales Tax. The intention of the legislature is further made clear in the amended Sch. I which was substituted by Act XXVII of 1952, where the term 'bread' in item 3 thereof includes 'double roti, chapathi, kulcha and shirmal.' This inclusive definition of the word 'bread' negatives the contention of the learned advocate that by 'bread' is only meant 'double roti' and no other kind of roti. If his contention was right, there was nothing to prevent the legislature from using the word 'double roti' for the word 'bread' nor can we justifiably infer that the exemption is only meant for the very limited class of citizens who consume 'double roti' while levying the tax on vast majority of citizens who do not consume that article of food. We are, therefore, not impressed by the contention that articles for which exemption is claimed were not included in the word 'bread.' In our view, 'bread' includes and should include all forms or kinds of bread which is prepared by moistening, kneading, baking, frying or roasting meal or flour with or without the addition of yeast, leaven or any other substance for puffing or lightening the article. We are, therefore, of the view that shirmal and tanure-ki-roti is exempt from sales tax within the meaning of the Hyderabad Sales Tax Act.

As far as item 2 is concerned, it has been held in the case of *Sharfoji Rao* v. *Commissioner of Sales Tax*, A. I. R. 1952 Hyd. 191 and in the case of *Hussain Hasan Hashmi* v. *Hyderabad State*, Civil Miscellaneous Petitions Nos. 56/1951 and 106/1951, that articles prepared from exempted goods are not exempt. In the first case ready made clothes made from exempted cloth and in the second case idli, a preparation from rice, an exempted article, was held not to be exempt. The learned advocate for the applicant has laid much stress on the words 'all forms' prefixed to 'rice' in item 1 of the exemption and contends that the intention is to include all preparations from rice. This contention to our mind is untenable. The word 'form' connotes a visible aspect such as shape or mode in which a thing exists or manifests itself, species, kind or variety. Rice in all forms would mean all kinds or variety of rice or species of rice, such as broken rice, kichidi rice, pichodi rice or rice flour, etc. In

[illegible] matter we find no justification in holding that [illegible] Item No 1 of the exempted articles in Sch. I of the Hyderabad General Sales Tax Act dealing with cereals should be interpreted as meaning cooked rice or biriyani or polao

In the result, we direct that a writ of *mandamus* be issued to the Sales Tax Commissioner not to collect Sales Tax on double roti, tanure kulchi and shirmal, as in our view it is included in the term bread'

Ordered accordingly.

APPELLATE CIVIL

Before Mr. Justice Rai Manohar Pershad

GOVERDHAN BANG AND ANOTHER — PETITIONERS[1]

v

THE GOVERNMENT OF INDIA AND ANOTHER — RESPONDENTS

Civil Procedure Code O VI r 17—Court's Powers to allow amendments—Nature and Scope

The plaintiffs sued the respondents for compensation for non delivery of one bag of pista and one bag of gulu After the written statements were filed, plaintiffs sought to amend the plaint by substituting one bag of dry dates and one bag of buqua in the place of pista and gulu and also the amount of compensation The lower court disallowed the amendment on the ground that it would change the nature of the cause of action and deprive the defendants of the vested right and dismissed the plaintiff's suit

Held that under O VI, r 17 the power to allow amendment of the pleadings is in the discretion of the court but that discretion has to be exercised according to judicial principles The main consideration to be borne in mind in exercising the discretion is that the rules of procedure have no other aim than to facilitate the task of administering justice, to avoid multiplicity of suits and to do substantial justice While considering whether the amendment should be allowed, the court need not or ought not to go into the alleged falsity of the case in the amendment Nor should it give a finding on the merits of the amendment sought for without first allowing the amendment, framing an issue thereon and allowing the parties to adduce evidence But there is a limitation on the wide powers of the court to amend the pleadings viz, that the court cannot by way of amendment substitute one distinct cause of action for another or change the subject matter of the suit Further, no amendment should be allowed which will take away any valid defence under the law of limitation But this rule refers to a legal right which has accrued to the defendant and not a bare right to plead limitation Hence, where there is an attempt by the proposed amendment to introduce a

[1] Civil Revision Petition No 230 of 1951 — 3rd February 1953

new cause of action or to claim a new relief does not apply. The amendment must be refused if the application has been actuated by mala fides but should not be refused merely because it is not acted on

Goverdhan Bang v The Government of India

Manohar Pershad, J.

In the present case the amendment should be allowed as it does not change the cause of action viz damages for non delivery of goods does not affect the right of limitation and the application cannot be said to have been made in a *mala fide* manner

Small Causes Courts Act Hyderabad ss 12 and 14—Nature and Scope

Section 12 of the Hyderabad Small Causes Courts Act provides for revision and s 14 lays down the powers of superintendence by the High Court Section 12 of the Act corresponds to s 115 of the Civil Procedure Code but the powers under s 12 are wider than that under the Civil Procedure Code Under s 115 of the Code the High Court cannot interfere where the lower court having jurisdiction has arrived at a wrong decision on a question of fact or even on a point of law But the powers under s 12 of the Act are wide enough to justify an interference in some cases on a question of fact and law also but the powers conferred are discretionary and should therefore be exercised for doing substantial justice

Ma Shue Mya v *Monla Hmaunye* A I R 1922 P C 249

Kannaalal Damnilal v *Bhojlandas Tulchand Pande* A I R 1949 Nagpur 5

Mangammal v. *Rangappa Naiker and others* A I R 1935 Mad 131

Sampat Shukul v *Sub Kiran Tiwari* A I R 1942 Oudh 161

Srirangam Chettiar v *Swarnam Pillai*, A I R 1935 Mad 302

Ramnath Hajarmal Marudi v *Mohanlal Radhakishen Marwadi*, A I R 1939 Nagpur 23

relied on

Revision against the judgment and decree of the District and Sessions Judge Secunderabad dated 6th June 1951 in Case No 117/1 of 1950 on the file of that court

Rai Bishambar Dayal, Advocate
Giija Pershad Sanghi, Vakil } for Petitioners

S P Srivatsai, Advocate for Respondents

ORDER

RAI MANOHAR PERSHAD, J. —This is a petition in revision on behalf of the plaintiffs against the judgment and decree of the court below dated 6th June 1951, dismissing the plaintiffs' suit. The facts in brief are

Goverdhan Bang and joint family business of Kani Ram Lakshminarayan, Plaintiffs, filed a suit for I G. Rs. 1027-10-0 against the Government (Union of India), owning the G.I P. and

Goverdhan Das v. The Government of India

Manohar Pershad, J.

the N.S. Railways. The allegation in the plaint is that on 28th December 1946 Messrs Kirpa Shanker Gangaram or their representative made over to the first defendant Railway Administration at their Wadi Bandar, Parcel Booking Office, two packages (one bag pista and the other of qulai) bearing private marks of the sender for carriage and delivery to plaintiff No. 1 at Hyderabad Deccan Railway Station. Kirpa Shanker Gangaram sent the railway receipt to plaintiff No. 1 with the instructions that after taking delivery of the consignment he should deliver one bag pista to Plaintiff No. 2. The suit consignment has not been delivered to the plaintiff No. 1 inspite of repeated demands. Hence, the plaintiffs are entitled to a compensation for non-delivery of the suit consignments. Defendant No. 1 in his written statement denied that any consignment containing one bag of pista and other of qulai was booked by Kirpa Shankar Gangaram on 28-12-1946 and stated that from Wadi Bandar, two bags, one of karak and the other bag of alu buqara were booked under PWB/3614/93. The bag containing karak was offered to the consignee who refused to take delivery, and it was, therefore, sold by auction. Apart from this, some legal objections were also raised regarding the maintainability of the suit and the jurisdiction of the court.

A similar written statement was filed by defendant No. 2. On 19-3-1951, plaintiff No. 1 put in a petition for amendment stating that due to oversight and by reason of a weak carbon being used by the staff while preparing the R.R. resulting in weak and faint impression of words, the plaintiffs have claimed one bag of pista and one bag of qulai instead of its actual contents of one bag of dry dates and the other bag of alu buqara, that for fair and just disposal of the suit, and for determining the real question in controversy, the following amendments are necessary:

(a) the words 'one bag dry dates' and 'one bag of alu buqara' be substituted at all places in the plaint instead of the words 'one bag of pista and one bag of qulai' wherever they have been used;

(b) In para 6 of the plaint, the details of the amount of I.G. Rs. 1027-10- may be struck off and the following details may be substituted instead of the said details in the said para;

(i) the value of one bag of dry dates weighing 2 mds. at Rs. 71 per md. the same being prevalent in the Hyderabad market in the first week of May 1948: total Rs. 142;

(ii) the value of one bag of alu buqara weighing 2 mds. at O.S. Rs. 130 per md.—total Rs. 260 less railway freight and customs duties not paid—balance Rs. 340.

(c) the words 'O.S. Rs. 340' may be substituted in all places instead of the words 'I.G. Rs. 1027-10 in the plaint, and

(d) that the following para may be added as per para 6 (a) of the plaint.

The second defendant-Railways offered one bag of dry dates on 13-12-1949, which was in a damaged and deteriorated condition and did not bear the proper marks to the plaintiff who denied to accept the same.

This petition was opposed by the defendants and a reply was filed on their behalf to the effect that the plaintiffs are not entitled to an amendment as this would not only alter the cause of action and the nature of the suit, but that the plaintiffs' suit will be barred by limitation if the amendment is allowed: that it will affect the jurisdiction and that finally, it will seriously hamper the defendants who cannot be compensated by costs.

The court below, after hearing the arguments of the parties regarding the amendment, accepted the plea of the defendants and rejected the petition for amendment. In the result, the suit was dismissed. Hence this petition in revision.

In this petition in revision, it is argued on behalf of the petitioner that the court below has erred in rejecting the petition for the amendment holding that the amendment would not only change the nature of the suit but deprive the defendants of the vested right and would also affect the jurisdiction of the court. It is contended that the suit is for compensation for non-delivery of the goods. Originally in the plaint it was stated that the consignment was for one bag of pista and one bag of qulai, and through the amendment, the plaintiffs only wanted to state that the consignment was not for one bag of pista and one bag of quali but for one bag of alu buqara and one bag of dry dates. By these amendments, neither the cause of action nor the nature of the suit is altered. It is only when the cause of action and the nature of the suit is altered that the court is justified in rejecting the petition for amendment. Reliance is placed on the cases of *Muhammad Raza* v. *Zamiruddin*, 1932 Patna 355 and *Jamini Bala Biswas* v. *Bank of Chettinad Ltd.* A.I.R. 1935 Rangoon 522.

Goverdhan Bang v. The Government of India — Manohar Pershad, J. —

On behalf of the other side, Shri Srivatsava, advocate, very strongly urged before me that the amendment would not only alter the cause of action and the nature of the suit but would deprive the defendants of the vested right and would also affect the jurisdiction of the trial court. In view of this, he contends that the amendment should not be allowed. Reliance is placed on the cases of *Kokamal Madho Ram* v. *Gulab Singh Gurudat Singh*, A.I.R. 1925 Bombay 248, *Wadhava Singh* v. *Pratap Singh*, A.I.R. 1928 Lahore 933 and *Gulam Mohd.* v. *Mehta Chandras*, A.I.R. 1927 Lahore 771. It is also contended that when the court below has rejected the petition for amendment, this court ought to be very reluctant in interfering in the discretion of the court below. I find that similar contention was raised on behalf of the defendants before the trial court also.

In order to appreciate the viewpoints of the learned advocates, a reference to O. 6, r. 17 is necessary which runs thus:

> "The, court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties."

Thus, it is clear from this that amendment of the pleadings is in the discretion of the court, but that discretion has to be exercised according to judicial principles. The main consideration to be borne in mind in exercising the discretion is that the rules of procedure have no other aim than to facilitate the task of administering justice, that multiplicity of suits should be avoided and that the interests of substantial justice should be advanced. While considering whether the amendment should be allowed, the court need not or ought not to go into the alleged falsity of the case in the amendment. So also, the court ought not to give finding on the merits of the amendment sought for without first allowing the amendment, framing an issue thereon and allowing both the sides to adduce evidence. But there is a limitation on the wide powers of the court to amend the pleadings, viz., that the court cannot by way of amendment substitute one distinct cause of action for another, or change the subject-matter of the suit.

In *Ma Shwe Mya* v. *Monku Hnaunge*, A.I.R. 1922 Privy Council, 249 their Lordships of the Privy Council observed as follows:

"All rules of court are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose so that full powers of amendment must be enjoyed and should always be liberally exercised but nonetheless no power has been given to enable one distinct cause of action to be substituted for another, nor to change, by amendment, the subject-matter of the suit."

The reason of the above rule is that substitution of a totally new case in place of the original one cannot be said in any sense to be an amendment of the original claim. Nor can it be said that a totally new "case is necessary for the purpose of determining the real question in controversy between the parties," that is, the controversy disclosed in the suit as originally framed. It follows from this principle that under the present Code:

(i) An amendment will generally be allowed where the nature of the suit is not altered provided it does not cause prejudice or surprise to the opposite party, vide *Kannalal Damrulal* v. *Bhagwandas Tekchand Pande*, A.I.R. 1949 Nagpur 5, *Rohini Kumar Chakrabarty* v. *Niaz Mohd. Khan*, A.I.R. 1944 Calcutta 4, *Eusoof Karva* v. *Mrs. Niemeyer & Co.* A.I.R. 1941 Rangoon 37 and *Chaudhri Atmaram* v. *Mian Umar Ali*, A.I.R. 1940 Lahore 256; and

(ii) An amendment may be allowed even if it introduces a new ground of claim or allegation of fact inconsistent with the original pleadings where the court thinks just and necessary, vide *Mangilal Nandram* v. *Zam Singh Ghagu & Co.* A. I. R. 1941 Nagpur 289; *Mangammal* v. *Rangappa Naicker & others*, A.I.R. 1935 Madras 137; *Pinnamaneni Gopalakrishnayya and others* v. *Veeramachunemi Ramaswami*, A.I.R. 1931 Madras 369 and *Chaudhri Hakam Ali* v. *Hashu*, A.I.R. 1938 Lahore 244.

Similar is the gist of the authorities cited by the learned advocate on behalf of the respondents. In view of this, I do not wish to discuss them in detail. To my mind, therefore, the question to be considered is whether by the proposed amendment the nature of the suit or the cause of action is altered. In the present case, plaintiff has claimed damages for non-delivery of the goods. In para 1 of the plaint, he has mentioned the goods as one bag of pista and one bag of qulai; by the amendment, the plaintiff wants to insert one bag of dry dates and one

Goverdhan Bang v. The Government of India

Manohar Pershad, J.

bag of alu buqara. This is the amendment which the plaintiff wants to make in the plaint. The cause of action was and is the non-delivery of the goods which would remain in either case. It is, therefore, difficult to hold how it can alter the cause of action or the nature of the suit itself. It is urged that it would deprive the defendants of the vested right, as for instance, the right of limitation.

It is true that, as a rule, plaintiff will not be allowed to amend his plaint by introducing a new cause of action which since the date of the suit has become barred by the statute of limitation. In other words, no such amendment should be allowed as will take away the valid defence under the law of limitation. Thus, where a plaintiff, though entitled to various alternative reliefs sued only for one of the reliefs within the period of limitation, he should not be allowed to amend the plaint in such a way as to enforce his other reliefs which have become time-barred at the date of the amendment.

The rule prohibiting the amendment which takes away an existing right from the defendant, in my opinion, refers to a legal right which has accrued to the defendant and not a bare right to plead limitation. Hence, where there is no attempt by the proposed amendment to introduce a new cause of action or to claim a new relief, the rule, in my opinion, does not apply. I am supported in this view by the case of *Sampat Shukul* v. *Sub Karan Tiwari*, A.I.R. 1942 Oudh 161, *Srirangan Chettiar* v. *Sornampillai*, A.I.R. 1935 Madras 202 and *Ramnath Hajarimal Marwadi* v. *Mohanlal Radhakisan Marwadi*, A.I.R. 1939 Nagpur, 23.

It is true that if the defendant is deprived of any vested right, then in that case, the court would be reluctant to allow an amendment. In this case, no question of depriving the right of the defendant arises at all. The defendant claims that period of limitation would start from the date of the non-delivery of the goods: that would hold goodand would not be affected by the amendment. It is further contended that the amendment should not be allowed as the application is not in good faith. It is true that it is one of the necessary conditions for the exercise of the court's discretion in allowing an amendment that the applicant has acted in good faith. But, as a general rule, leave to amend ought not be refused merely because the applicant has not acted *bona fide*, but would be refused if he has been acting *malu fide*. To my mind, this contention of the learned advocate also does not hold good. Originally, the plaintiff had

claimed I.G. Rs. 1027-10-0 and by the amendment he claims only O.S. Rs. 340 which cannot be said to be *mala fide*. It is urged that the plaintiff's claim is more in the nature of a gamble. I fail to appreciate this argument either. Plaintiffs have paid a higher court fee and are claiming only O.S. 340. The learned District and Sessions Judge also has held that the plaintiffs have not acted *bona fide*. He has based his conclusion on two facts:

(i) That the plaintiffs in para 2 of the plaint have stated that Kirpa Shanker Gangaram sent the receipt with the instructions that one bag of pista should be delivered to plaintiff No. 2 after taking delivery which clearly rules out the possibility of any mistake occasioned by the faint writings, and

(ii) when the Railway authorities offered to deliver the consignment to the plaintiff, he refused to accept.

To my mind, these facts do not constitute *mala fide* of the plaintiff nor do they as a matter of fact go to prove that the plaintiff has not acted *bona fide*.

The next question that remains to be considered is whether an amendment could be refused on the ground that it affects the jurisdiction of the court. The lower court has held that as it affects the jurisdiction of the court, the amendment cannot be allowed. I am afraid, I cannot agree with this opinion. I may only point out that while considering whether an amendment should be allowed or not, the court ought not to go on the merits of the case. If, after allowing the amendment, the court comes to the conclusion that the court has no jurisdiction, the court could return the plaint to the plaintiff to be presented in the proper court.

The last point that has to be considered is whether this court can interfere in revision. I may point out at this stage that the present suit is filed under the Hyderabad Small Causes Courts Act (VI of 1330 F.). Section 12 of the Act makes provisions for revisions and s. 14 lays down the powers of superintendence of the High Court. Section 12 corresponds to s. 115 of the Civil Procedure Code. The power of revision under s. 12 of the Hyderabad Small Causes Courts Act is wider than that under the Civil Procedure Code. It is true that the powers conferred are discretionary and should, therefore, be exercised for the purpose of doing material justice. Under s. 115 C.P.C., the High Court cannot interfere when the lower court having

Mathavarupu Anantharamiah v. B. Venkat Ratnam

jurisdiction has arrived at a wrong decision on a question of fact or even on a point of law. But the powers conferred under s. 12 of the Hyderabad Small Causes Courts Act are wide enough to justify an interference in some cases on a question of fact and law also.

Thus, after giving a careful consideration, I feel that the court below has erred in rejecting the petition for amendment and this is a fit case where interference is called for in revision. The plaintiff will have, however, to pay to the defendant Rs. 25 by way of costs. The petition in revision is, therefore, allowed, judgment of the court below is set aside and the case is remanded to the trial court with the direction that the court should proceed with the case on the merits after allowing the amendment to be incorporated. Costs of this court to abide the result of the suit.

Revision allowed.

EXTRAORDINARY ORIGINAL JURISDICTION

Before Mr. Lakshmi Shankar Misra, Chief Justice and Mr. Justice Mohammed Ahmed Ansari

MATHAVARUPU ANANTHARAMIAH .. PETITIONER*

v.

B. VENKAT RATNAM AND OTHERS .. RESPONDENTS

Constitution of India, art. 226—Petition for issue of a writ of mandamus—Nature and scope of the powers of the High Court to issue writs—Motor Vehicles Act, ss. 47 and 57—Grant of permit for plying stage carriages—Lack of opportunity to the petitioner to urge objections against the grant—Absence of infringement of petitioner's right—Maintainability.

The petitioner applied for the issue of a writ of *mandamus* against the grant of a permit by the Regional Transport Authority to the respondent for plying stage carriages on Suriapet-Jagayyapet route on the grounds that the provisions of s. 57 of the Motor Vehicles Act have been contravened; that the petitioner has been deprived of his vested legal right to urge objections against the grant and the action of the Regional Transport Authority is illegal and without jurisdiction.

Held, that s. 57 (1) of the Motor Vehicles Act relates to the procedure to be followed for granting 'contract carriage permits' and has no application to cases of 'stage carriage permits.' Sub-s. 2 of s. 57 read along with s. 47 provides for making representations against applications for the grant 'stage

* Writ Petition No. 187 of 1951-52. 26th November 1952.

carriage permits' and under it only 3 classes of persons are given this right. The applicant does not fall within those categories and therefore the order complained of does not in any manner violate his fundamental rights. The words 'for any other purpose' occurring in art. 226 of the Constitution contemplate only the enforcement of a legal right or the performance of a legal duty.

No doubt, art. 226 does not specifically mention the persons at whose instance the writs referred to therein can be obtained. It is, however, well known, that the rights of which protection by way of writs is provided in the Constitution, is a private and personal right. The powers under art. 226 should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate or specific remedy available to him. A writ under art. 226 can be issued in cases where the subordinate tribunals or bodies or officers act wholly without or in excess of jurisdiction or they refuse to exercise a jurisdiction possessed by them. They can also be exercised where redress is sought against violation of the principles of natural justice or there is an error apparent on the face of the record and the act, omission, or error has resulted in manifest injustice. The jurisdiction to issue writs is not wide enough to enable the High Courts to convert themselves into courts of appeal and examine for themselves the correctness of the decisions impugned or decide what is the view to be taken of the points at issue between the parties including the issue of jurisdiction.

In the present case, amongst the remedies provided for cases in which the prescribed procedure is not followed or wrong decision is given by the Regional Transport Authorities in granting the permit, there is a right of appeal and methods are provided for rectification of errors. Further, the applicant is not amongst the persons who are injured by the grant of the permit since he has no legal interest to protect. His position, being merely of a volunteer, he has no *locus standi* to invoke the jurisdiction of the High Court under art. 226 of the Constitution

Bagram Tulpuje v. *The State of Bihar, (1950) 5 Dominion L.R. 189*

Commonwealth of Massachusetts v. *Andrew W. Mellon, 262 U.S. 447*

Indian Sugar Mills Association v. *Secretary to Government, Uttar Pradesh Labour Department and others, A.I.R. 1951 All. 1*

G. Veerappa Pillai v. *Raman and Raman Ltd., A. I. R. 1952 Supreme Court 192*

relied on.

Ramlal Kishen, Counsel for Petitioner

B. Narahari Sastri, Madhav Reddy, } *Advocates* for Respondents

JUDGMENT

LAKSHMI SHANKAR MISRA, C.J.—This is an application under art. 226 of the Constitution for the issue of a writ of *mandamus*. The petitioner, Muthavarapu Anantharamiah is an inhabitant of Hujurnagar taluq, Nalgonda District, and carries on motor transport business in that place. On the 26th

Mathavarupu Anantharamiah v. B. Venkat Ratnam

L. S. Misra, C. J. & M. A. Ansari, J.

April 1951, opposite party No. 1, P. Venkat Ratnam, the Proprietor of Rama Mohan Motor Service, Vijayawada, was granted renewal for one year of his previous permit for plying stage carriages on Suriapet-Jagayyapet route. It is alleged by the petitioner that the granting of the aforesaid permit is in flagrant violation of the mandatory provisions of s. 57 of the Motor Vehicles Act. The specific complaint is that the non-adherence to the procedure laid down in the above section has operated to deprive the vested legal right of the petitioner to take objection to the grant and that the action of the Regional Transport Authority in issuing the permit otherwise than in accordance with the procedure prescribed by the section is wholly illegal and without jurisdiction.

2. Section 57 (1) relates to the procedure which had to be followed in granting 'contract carriage permits' or 'private carrier's permits'. It has no application to cases of 'stage carriage permits', with which we are now concerned. Sub s.(2) of that section deals with the latter but it has to be read with s. 47. Representations against the applications made by persons for running stage carriages within the State are allowed by s. 47 of the Act and under it there are only 3 classes of persons who are given this right:

> (a) persons already providing road transport on any proposed route or routes;
>
> (b) a local or police authority within whose jurisdiction any part of the proposed route (or routes) lies; and
>
> (c) an association interested in the provision of road transport facilities.

The applicant does not come within any one of these categories and the question which arises for consideration is whether it is open to him to invoke the aid of this Court by way of *mandamus* under art. 226 of the Constitution.

3. It is conceded that the order complained of does not in any manner violate the petitioner's fundamental rights. The contention urged on behalf of the applicant is that since this court has a right to issue writs not only to protect persons whose fundamental rights have been invaded, but also 'for any other purpose', the petitioner is entitled to relief. The words 'for any other purpose' have been interpreted from time to time by the High Courts and the decisions are uniform that they contemplate only the enforcement of a legal right or performance of

a legal duty. It is sufficient in this connection to refer to the full bench case of the Patna High Court in *Bagarum Tulpute* v. *The State of Bihar*, (1950) 5 Dominion Law Reports 189 (F.B). The observation of Meredith, C.J. in that case may here be reproduced:—

"It is quite clear that these words have been added advisedly and must mean something in addition to the enforcement of the rights conferred by Part III and this is so whether they be read *ejusdem generis* or otherwise. It is clear because art. 32, which is the corresponding provision for the Supreme Court, does not contain these words, but speaks merely of the enforcement of any of the rights conferred by this Part, and that is obviously because the original jurisdiction of the Supreme Court extends only to the enforcement of the fundamental rights."

The learned Chief Justice then went on to observe:—

". . . . Article 226 contemplates the issue of writs and directions for purposes other than the enforcement of the fundamental rights. At the same time the words can hardly mean that the High Court can issue writs for any purpose it pleases. I think the correct interpretation is that the words mean for the enforcement of any legal right and the performance of any legal duty. To that extent the words must be read *ejusdem generis*, which is the ordinary principle of construction."

4. On behalf of the applicant it is said that he had a legal right to raise objection to the grant of stage carrier's permit to the opposite party No. 1 and that this right was denied to him. We have already mentioned that this is not correct as he is not one of the persons referred to in s. 47.

5. The next point which has to be considered is whether the petitioner as a member of the public can come to this court for the issue of a writ *mandamus*. Article 226 does not specifically mention the persons at whose instance the writs referred to therein can be obtained. It is, however, well-known that the rights of which protection by way of writs is provided for in the Constitution, is a private and personal right. As observed in *Commonwealth of Massachusetts* v. *Andrew W. Mellon*, 262 U.S. 447,

> "it is only where the rights of persons or property are involved and such rights can be presented under some judicial form of proceedings, that courts of justice can interpose relief."

Mathavarupu Anantharamiah v. B. Venkat Ratnam — L. S. Misra, C. J. & M. A. Ansari, J. —

Reference in this connection may be made also to the decision in *Indian Sugar Mills Association* v. *Secretary to Government, Uttar Pradesh Labour Department and others*, A.I.R. 1951 Allahabad 1, wherein a full bench of the Allahabad High Court laid down that the powers under art. 226 should be sparingly used and only those clear cases where the rights of a person have been seriously infringed and he has no other adequate or specific remedy available to him. The petitioners in that case were not affected by the order of which they complained. A preliminary objection was raised on behalf of the Government to the effect that the application was not maintainable as it had been filed by a person whose rights had not been directly affected. The learned judges, who decided the case, remarked in this connection that:

> "everyone of the several millions of this state cannot be given the right to come up and agitate and re-agitate against an act or order like the one in question. He cannot say that his rights are directly affected by the order. The said Association has been registered under s. 4 of the Trade Unions Act, No. XVI of 1929. The applicant is thus a distinct and separate person from the various mills which are members of it and the order complained against is not an order directing any payment out of the assets of the applicant. Neither the bonus nor the retainer allowance has to be paid out of movable and immovable property of the Indian Sugar Mills Association but has to be paid by the sugar mills out of their own separate funds.

The same view was taken in P. Rama Moorthi, in re. (Rajamannar, C. J.), 1952 (2) Madras Law Journal, 671, and the recent case of *Biman Chandra Bose* v. *C. Mukherjee, Governor, West Bengal and others*, A.I.R. 1952 Calcutta, 799. In *G. Veerppaa Pillai* v. *Raman and Raman, Ltd.*, A.I.R. 1952 Supreme Court 192, their Lordships of the Supreme Court have laid down that the writs referred to under art. 226 can be issued in those rare cases only where the subordinate tribunals or bodies or officers act wholly without or in excess of jurisdiction or they refuse to exercise a jurisdiction possessed by them. They can also be exercised where redress is sought against violation of the principles of natural justice or there is an error apparent on the face of the record and the act, omission, error or excess has resulted in manifest injustice. Their Lordships emphasise that the jurisdiction to issue writs is not wide enough or large enough to enable High Courts to convert themselves into courts of appeal and examine for themselves the correctness of the decisions

impugned or decide what is the view to be taken of the points at issue between the parties including the issue of jurisdiction, if any.

6. It may be mentioned in the present case that amongst the remedies provided for cases in which the prescribed procedure is not followed or wrong decision is given by the Regional Transport Authorities in granting the permit, there is a right of appeal and methods are provided for rectification of errors. The applicant is not amongst the persons who are injured by the grant since he has no legal interest to protect. His position being thus merely of a volunteer we consider that he has no *locus standi* to come to this court under art. 226 of the Constitution.

7. We have advisedly thought it desirable to indicate in this case the view of law that has prevailed in the various High Courts in connection with the writ jurisdiction. This is because this court is being inundated with applications under art. 226 of the Constitution most of which are obviously untenable on elementary principles which govern the issue of those prerogative writs. We feel that it is necessary for the guidance of the bar to emphasize that the jurisdiction conferred by art. 226 does not provide an alternative mode of redress to the normal process of litigation in ordinary courts of law. The powers under it are exercised only for meeting extraordinary cases where personal or private rights of persons have been seriously infringed, and they are otherwise unable to obtain any adequate or prompt remedy for the redress of his grievance.

8. The application fails and is accordingly dismissed.

Petition dismissed.

State v. Prabhu Dayal

APPELLATE CRIMINAL

Before Mr. Justice Shripat Rao Palnitkar, and

Mr. Justice A. Srinivasachari

STATE .. .. .. PETITIONER*

v.

PRABHU DAYAL .. . .. RESPONDENT

Criminal Procedure Code, s. 155—Information in non-cognizable case—Scope of the powers of the officer-in-charge of the police station—Whether permission necessary to file charge-sheet after investigation—'charge-sheet' and 'referred charge-sheet' explained.

The respondent who was charge-sheeted for the commission of non-cognizable offences under ss. 467 and 468. I.P.C. contended that the permission of the magistrate is necessary, not only for purposes of investigation but also for preferring the charge-sheet after investigation.

Held, that under s. 155 (3) when a police officer in charge of a police station receives an order for investigation of a non-cognizable offence he is empowered to proceed in the same manner and exercise the same powers in respect of investigations which he is empowered to exercise in a cognizable case, except the power to arrest the accused without a warrant. Once the order of investigation is received, there is no limitation or restriction on his powers of investigation and proceeding with the case. There is no provision in the above section for reporting the result of his investigation to the authority issuing the order to investigate and then wait for instructions to prefer his charge-sheet before a magistrate. The police officer investigating into a non-cognizable offence after getting due orders becomes invested with all the powers which are given to him under Chapter XIV, Cr.P.C., including the power to file a challan.

Section 173, Cr.P.C., lays down that the police after investigating into a case should report to the magistrate That report when it takes the form of a charge-sheet is enquired into and tried and decided It may ultimately lead either to the discharge or acquittal of the accused or of his being punished. Such a report is called a challan or charge-sheet and is taken cognizance of by a magistrate under s. 190 (b) Cr P.C. On the other hand, if that report be to the effect that the case was a false one, then the court may decide accordingly and only then, the question whether the information was a false one arises. Such a report is known as referred charge-sheet.

Revision against the order of the City Criminal Court, Hyderabad, dated 18-4-1952 in Case No. 45/2 of 1951-52 on the file of that court.

Gopal Rao Murumkar, Govt. Advocate for Petitioner.

Purushottam Rao, Vakil for Respondent.

*Criminal Revision Petitions Nos. 479 and 480/6 of 1952-53. 23rd February 1953.

State
v.
Prabhu Dayal
—
Shripat Rao, J.
&
Srinivasachari, J.
—

ORDER

This revision petition, preferred against the judgment of the lower court, raises some legal issues. The facts of the case are that the police received information to the effect that the accused who was a teacher in the Kayasth Pathashala issued false and forged transfer certificates in lieu of some gratification to certain students purporting to show that they had passed in their examinations (though they had actually failed) and that they are eligible for admission to the higher standard. The transfer certificates for which they applied for, were required as they wanted to enter and read in some other schools. The police, therefore, were of opinion that the accused had committed the offences mentioned in ss. 395 and 397 of the Hyderabad Penal Code, corresponding to ss. 467 and 468 of the Indian Penal Code. As the offences were non-cognizable, the police wrote to the City Criminal Court for permission to investigate the offences under s. 156, Hyderabad Criminal Procedure Code, corresponding to 155, I. Cr. P. C. The City Criminal Court ordered the police to investigate the case. The police had also written to Government for permission to investigate. That permission was also obtained. On the basis of the said orders, the police investigated the case against the accused and preferred four challans against him. Two of the challans were joined together in one case which is the subject-matter of consideration in case No. 479 of 1952 before us. The other two challans were preferred against him and they were tried together by the lower court against which revision No. 480 of 1952 has been preferred which is also before us for consideration today.

2. We have heard the arguments of the learned advocates of the parties in both the revision cases, and this decision will govern both the cases. A copy of this be made a part of the record in the latter revision case.

3. The learned magistrate of the lower court decided the cases on the ground that the institution of the charge-sheet was not proper and unauthorised because no permission was taken from Government, or the magistrate to institute the charge. The point for decision therefore is whether after giving the order to the police to investigate the offence (being non-cognizable under s. 156, H. Cr. P. C.), the law requires that a fresh permission should be given by the government or the magistrate concerned for preferring a charge-sheet after considering the result of the investigation held by the police. The provisions of ss. 156 and 157, H. Cr. P. C., are the same as the provisions of s. 155

State
v.
Prabhu Dayal
—
Shripat Rao, J.
&
Srinivasachari, J.

I. Cr. P. C.; in it, it is laid down, that when information is given to an officer in charge of a police station of the commission of a non-cognizable offence he shall enter in a book the substance of such information and refer the informant to the magistrate. It is further provided that no police officer shall investigate a non-cognizable offence without the order of the magistrate of the 1st or 2nd class having power to try such case or commit the same for trial. There is a further provision in the Hyderabad Code that Government may also issue such order empowering the police to investigate. Sub-section 3 of s. 155, I. Cr. P. C. which is equivalent to sub-s. 2 of s. 157, H. Cr. P. C., provides that a police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

4. It is clear therefore from this sub-section that when a police officer in charge of a police station receives an order for an investigation of a non-cognizable offence he is empowered to proceed in the same manner and exercise the same powers in respect of investigations which he is empowered to exercise in a cognizable case except the power to arrest the accused without warrant. Thus, once the order of investigation is received, there is no limitation or restriction on his powers of investigation and proceeding with the case (the question of arrest without warrant does not arise in this case). Therefore, as far as the section is concerned, it is clear that there is no direction that he should report the result of his investigation to the authority issuing the order to investigate and then wait for instructions to prefer his charge-sheet before a magistrate. It is conceded that in the case of cognizable offences no permission is necessary to prefer a charge-sheet. We do not see any reason why such a permission is necessary in a non-cognizable offence which is investigated after getting the necessary order to investigate. At any rate, the sub-section has not provided for such a necessity. It is therefore clear to us that once a police officer takes up the investigation of a non-cognizable case (after getting due orders) the investigation which he holds becomes an investigation under Chapter XIV, Cr. P.C., and he becomes invested with all the powers which are given to him under Chapter XIV, including the power to file a challan.

5. The learned advocate for the respondent relied upon 10 Dec. L.R. (28) *Sana Ahmed* v. *The State* and argued that after investigation by the police a fresh order by the magistrate directing the filing of charge-sheet on the report of the police is

State
v.
Prabhu Dayal
—
Shripat Rao, J.
&
Srinivasachari, J.
—

necessary. But we find that this ruling has been over-ruled in an unreported case by a bench of seven judges in *Sarkari-Ali* (*State*) v. *V. Shanker Iyer* (Appeal No. 1 of 1355 F. (F.B.) instituted on the 2nd of Azur 1355 F. and decided on 14-8-1355 F). The learned judges decided in that case that they cannot agree with the opinion mentioned in Sana Ahmed's case and that it should not therefore be followed. It was held therein that s. 157, H. Cr. P.C., is in that chapter of the Hyderabad Criminal Procedure Code which deals with the powers of the police to investigate a case and therefore excepting the fact that in non-cognizable cases authority to investigate is necessary there are no other limitations on the powers of an investigating officer as laid down in that chapter. The learned advocate for the respondent also relied upon 35 Dec. L.R. p. 216 *Abdul Ali Khan* v. *The State* in which Sana Ahmed's ruling was followed. As Sana Ahmed's case which has been over-ruled has been followed in 35 Dec. L.R. 216, it is no longer binding. The lower court has placed reliance upon 1915 A.I.R. Bombay 80 *Appa Ragho Bhogle* v. *Emperor*. After perusing the said ruling, we find that the facts are not very clearly stated. It appears that a magistrate directed the police to investigate non-cognizable offence and report. The police investigated the case but did not make a report and in the meanwhile the police instituted proceedings against the applicant under s. 211, I.P.C. The learned judges held that the conviction of the complainant under s. 211 (viz., preferring a false charge with intent to injure) was not valid. It is clear from these short facts that it was not the person who was originally intended by the informant to be the accused who was convicted and punished but it was the other way; the informant was punished for giving false information. The learned judges held that the report under s. 173 with regard to the original complaint of the informant (or the complainant) was necessary before there could be a charge against that informant for giving false information. Section 173 lays down that the police after investigating into a case should report to the magistrate. That report when it takes the form of a charge-sheet is enquired into and tried and decided and it may lead ultimately either to the discharge or acquittal of the accused or of his being punished. Such a report is called a "challan" or a "charge-sheet" and is taken cognizance of by a magistrate under s. 190 (b) I. Cr. P.C.—s. 195 (b) H. Cr. P.C. On the other hand, if that report be to the effect that the case was a false one then the court may decide accordingly; and only then could a question whether the information was a false one, arise. Such a report is known as a "referred charge-sheet." Therefore, in the Bombay case the question was different; as the police

State v. Mumtaz Ali

preferred a charge-sheet under an offence of giving wrong information without making a report that the case was a false one. In the case before us, there is actually a report under s. 173 which was enquired into and tried by the lower court and the proceedings are at the stage of framing of charges. Hence 1915 Bombay p. 80 is not applicable in this case.

6. Thus, in this case there was a report (challan or charge-sheet) which the magistrate of the lower court has taken cognizance of and tried. There is therefore no defect as regards the presentation of the challan and the view of the learned magistrate of the lower court that the challan was contrary to law, cannot be accepted.

7. We, therefore, set aside the order of the lower court, remand the case to that court and direct that the case be proceeded with and disposed of according to law.

Ordered accordingly

APPELLATE CRIMINAL

Before Mr. Justice Shripat Rao Palnitkar, and
Mr. Justice A. Srinivasachari

STATE .. .. .. PETITIONER*

v.

MUMTAZ ALI AND OTHERS .. .. RESPONDENTS

Part B States Laws Act, III of 1951, s. 6 (d)—Scope—Pendency of trial for an offence under s. 333 of the Hyderabad Penal Code—Application of the Indian Penal Code and Criminal Procedure Code—Continuance of trial and conviction by the Special Magistrate—Absence of Committal Proceedings—Validity of the trial and conviction.

The respondents were charged for the commission of an offence under s. 333 of the Hyderabad Penal Code. The magistrate of Charbi granted pardon to one of the accused who was taken as an approver. The case was tried by a Special Magistrate and some of the accused being found guilty were sentenced to four years imprisonment and the rest were acquitted. On appeal by the accused, the sessions ordered a retrial on the grounds that after the 1st April 1951, the Indian Criminal Procedure Code was made applicable and under that code an offence under s. 400 was exclusively triable by the Court of Sessions and therefore the trial by the Special Magistrate was *ultra vires* until he was empowered to try the same under s. 30 of code; further when pardon was tendered to an approver and his statement

* Criminal Revision No. 823/6 of 1952 20th February 1953.

was recorded the case must be committed to the Sessions under s. 337 (2-A) of I. Cr.P.C.

State v. Mumtaz Ali

Shripat Rao, J. & Srinivasachari, J.

Held, that under s. 6 (d) of the Part B States Laws Act the legal proceeding which was started in this case could be continued and was rightly continued by the trial judge and he was empowered to award punishment under the Hyderabad Penal Code as if the new Acts, the Indian Cr. P. C. or I.P.C. had not been passed. Thus, the view that the case was exclusively triable by the Court of Sessions making s. 400 I.P.C. applicable to the case is not correct.

The Special Magistrate had and did exercise the powers of a District Magistrate and under the provisions of the Hyderabad Cr. P.C., Schedule II, an offence under s. 333 H.P.C. was triable by the District Magistrate and he could impose a punishment of 4 years. No question of the exercise of special powers under s. 30 arises in this case. That question would have arisen if the Special Magistrate had intended to or had actually imposed punishment higher than that of 4 years under the provisions of s. 30 of I.Cr.P.C.

There is no provision similar to cl.2-A of s. 337, I.Cr.P.C. in s. 268 H.Cr.P.C. Under s. 268 of H.Cr.P.C. the only prohibition for trial was with regard to the magistrate who actually tendered pardon. Another magistrate having equal powers can try the case. It is not necessary to commit the case for trial to a Court of Sessions. It is also to be kept in mind that under s. 25 of Act I of 1951, the I.Cr. P.C. shall apply to all proceedings instituted after the coming into force of the said Act in any Part B States and *so far as may be* to all cases pending in any Criminal Court. Thus, it is clear that the application of the Indian Criminal Procedure Code is not obligatory in all cases.

In this view of the matter, the trial was rightly conducted and continued by the special magistrate and the committal of the case for trial to the Court of Sessions was not necessary.

S.P. Shrivatsava, Govt. Advocate for Petitioner.

Abdul Karim, Advocate for Respondents.

ORDER

This is a revision petition which has been preferred by the State against the order of the Additional Sessions Judge at Hyderabad remanding the case for re-trial to the court of the Special Magistrate.

The brief facts are that 51 accused were charged for the commission of dacoity under s. 333 of the Hyderabad Penal Code. Before the trial commenced, pardon was tendered to one of the accused (Zulfiqar) in March 1950 by the magistrate of Taluka Gharbi. The case was transferred to the court of the Special Magistrate who tried the same and recorded a mass of evidence covering about 157 witnesses. The Special Magistrate held the 24 accused, present before us, guilty of the charge and

State v Mumtaz Ali — Shripat Rao, J. & Srinivasachari, J. —

sentenced them to imprisonment of four years each. The rest of the accused were acquitted. Against that judgment, the accused who were convicted preferred an appeal before the lower court which allowed the appeal and sent the case for re-trial. The Government have filed this revision petition against that order.

The learned Judge of the lower court has referred to two grounds on which he has held that the case ought to have been committed to the Court of Sessions by the Special Magistrate (the trying Judge) and that he had no jurisdiction to try the same and convict the accused.

One glaring point which appears to us very clear in the judgment of the lower court is that not only the present accused but all the accused who were acquitted have been sent for re-trial, though there was no appeal by the Government before the lower court against the order of acquittal. It is also stated by the learned advocate for the revision petitioner that no notice was given to those acquitted persons. Thus, the order of acquittal could not have been set aside without any appeal from the Government or without any notice to them.

The first reason given by the learned judge of the lower court for quashing the order of the trial judge is, that from the first of April 1951 the Indian Criminal Procedure Code was made applicable to this State and according to that code the offence under s. 400, I.P.C., was exclusively triable by the Court of Sessions and therefore the trial of the case from that date was *ultra vires* till the day the Special Magistrate was vested with special powers under s. 30 of the Indian Criminal Procedure Code. We cannot agree with the said contention. The learned Additional Sessions Judge has not kept in view the provisions of s. 6 of the Part B States (Laws) Act 1951 by which the Indian Penal Code was made applicable to this State. The relevant portion of s. 6 states that the corresponding law in force in any Part B State shall stand repealed save as otherwise expressly provided for in the Act. There are four provisions in s. 6 and in our opinion proviso (d), which runs as follows, is applicable in this case :—

> "d. Any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability penalty, forfeiture or punishment as aforesaid ; and any such investigation, legal proceeding or remedy my be instituted, continued or enforced and any such penalty, forfeiture or

punishment may be imposed as if this Act has not been passed".

From this proviso, it is clear that the legal proceeding which was started in this case could have been continued and was rightly continued by the trial judge and he was empowered to award punishment under the old Act (H. P. C) as if the new Acts, the Indian Criminal Procedure Code or the Indian Penal Code, had not been passed. Thus, the view that the case was exclusively triable by the Court of Sessions making s. 400, I.P.C. applicable to the case cannot be agreed to. Section 400, I.P.C. would not be applicable to the case in spite of the fact that the trial of the case continued even after April 1951 as under s. 6 of the Part B States (Laws) Act, 1951, the old Act still remained in operation on account of the above proviso. The observation of the lower court that, unless and until the Special Magistrate acquired special powers under s. 30 of the Indian Criminal Procedure Code, he could not have heard this case is not also correct. The Special Magistrate, it is clear, has and does exercise the powers of a District Magistrate and under the provisions of the Hyderabad Cr.P.C., Schedule II, an offence under s. 333, H.P.C. (under which the accused were prosecuted) was triable by the District Magistrate and he could impose a punishment of 4 years. No question of the exercise of special powers under s. 30 arises in this case. That question would have arisen if the Special Magistrate had intended to or had actually imposed punishment higher than that of four years under the provisions of s. 30 of the Indian Criminal Procedure Code.

The second point dealt with by the learned Additional Sessions Judge is that under the provisions of s. 337 (2-A) of the I.Cr.P.C. this case ought to have been committed for trial to the Sessions Court as there was an approver in this case and when pardon is tendered to an approver and his statement recorded, the case must be committed to the Sessions under the provisions of s. 337 (2-A). Here it must be observed that the porvisions of s. 268 H.Cr.P.C. are not the same as those of s. 337 of the Indian Cr.P.C. Clause 2-A which appears in s. 337, I.Cr.P.C., is not to be found in s. 268 of the H.Cr.P.C. It is to be remembered that clause 2-A was introduced in s. 337 I.Cr.P.C. by an amendment made under the Criminal Procedure Code Amendment Act of 1923. Section 337 of the Indian Cr.P. Code, as it stood before the amendment of 1923, was in many respects similar to s. 268, H.Cr.P.C. Specially, cl. (4) of s. 337, which reads as follows, was in substance similar to the provisions of the Hyderabad Cr.P.C., s. 268:—

State
v.
Mumtaz Ali
—
Shripat Rao, J.
&
Srinivasachari, J.
—

"(4) Every Magistrate other than a Presidency Magistrate who tenders a pardon under this section shall record his reasons for so doing and when any magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such magistrate."

Thus, it is clear from above provisions and similar provisions in s. 268 of the H. Cr. P.C. that the only prohibition for trial was with regard to the magistrate who actually tendered pardon and it was provided that the magistrate who tendered pardon should not try the case himself. Another magistrate having equal powers can try the case. It was not necessary, then, to commit the case for trial to a Court of Sessions. We are fortified in our view by the decision in 1898 Punjab Record No. 3, p. 6, *Queen Empress* v. *Batera and others*. In that case, the same question was raised that when once pardon was tendered the District Magistrate had no jurisdiction to hear the case and he ought to have committed the case for trial to a Court of Sessions. It was held that the provisions of s. 337 of the Code must be construed strictly and that the disqualification created by the last paragraph of the section applies only to that magistrate before whom the suspected person was brought face to face and who attempted to induce him by promise of pardon to make a true and full disclosure, the examination referred to in the said paragraph being the one made on the tender of the pardon and directly resulting from it. Thus, another magistrate can try the case. In the case before us, the case was not tried by the magistrate who had tendered the pardon. From this point of view therefore the opinion of the lower court is not correct. We also have to keep in mind the provisions of Act I of 1951 by which Indian Criminal Procedure Code was made applicable to Part B states. Section 25 of the said act (cl. 3) makes it clear that the provisions of Indian Cr. P.C. shall apply to all proceedings instituted after the coming into force of the said act in any Part B State and 'so far as may be' to all cases pending in any criminal court, in the State when the said Code comes into force therein. It is clear from the words used that the provisions of Indian Cr. P.C. would apply as far as may be. Their application therefore is not obligatory in all cases. When we read the provisions of this sub-section with the provisions of s. 6 of the Part B States (Laws) Act III of 1951, it is clear that the intention is to permit the courts to continue legal proceedings for the purposes of imposing such punishments as could have been imposed under the provisions of the Hyderabad P.C. It is unnecessary to say that

the continuance of the proceedings in this case was for the purposes of imposing punishment (if the guilt be proved) under the provisions of the Hyderabad Penal Code and that could not be done if the provisions of s. 337, I. Cr. P.C. were strictly applied and the cases were to be committed to the Court of Sessions. The purpose of saving clause in the Part B States (Laws) Act was to give validity to the proceedings already undertaken and provide continuance of the proceedings till the termination of the case. Thus, we are clearly of the opinion that the view taken by the lower court is not correct and must be set aside.

We therefore hold that the trial was rightly conducted and continued by the Special Magistrate. The committal of the case for trial to the Court of Sessions was not necessary. We set aside the order and judgment of the Additional Sessions Judge and direct the Sessions Judge to hear the appeals on merits and dispose of the same according to law.

The learned Public Prosecutor drew our attention to the fact that the accused were unnecessarily released on bail by the lower court, and as they had already been convicted by the Special Magistrate, it was not a fit case for their being enlarged in appeal. We prefer to leave this question to the discretion of the Sessions Judge to whom we have remanded this case. The revision petition is allowed with the above directions.

Revision allowed

APPELLATE CRIMINAL

Before Mr. Justice Mir Siadat Ali Khan

VIJAYA RAO .. .. .. PETITIONER*

v.

STATE .. .. RESPONDENT

Indian Penal Code, s. 228—Contempt of Court—Nature and Scope—Criminal Procedure Code, s. 480—Right of appeal.

Held, that in order to constitute an offence under s. 228 of the Indian Penal Code three things must exist; (1) intention, (2) insult or interruption, (3) public servant sitting in any stage of judicial proceeding. No doubt, a protest made during the course of a judicial proceeding does interrupt the court, but so long as it is *bona fide* it is the duty of the court to listen to such protest however much it may delay the proceeding. But if the protest is made with the sole intention to interrupt, it ceases to be *bona fide* and constitutes contempt.

When an offence under s. 228, Indian Penal Code, is tried and convicted under s. 480 of the Criminal Procedure Code by a magistrate, an appeal lies

*Criminal Reference No. 384 of 1952. 23rd February 1953.

Vijaya Rao v. State

to the Sessions Judge against the conviction under cl (1) of s 486, Criminal Procedure Code

M S Ali Khan, J.

Reference from the Court of the Sessions Judge, Gulburga in Criminal Case No. 74/6 of 1952-53 on the file of that court.

.. .. .. for Petitioner.

Trimbak Rao, Advocate for Respondent.

ORDER

This is a reference from the District and Sessions Court, Gulbarga, recommending that the sentence of a fine of Rs. 50 and in default 15 days imprisonment passed by the Munsiff Court, Tandur, on 30th June 1952 against the accused Vijay Rao for contempt under s. 228, Indian Penal Code, be set aside as it is bad in law. The revision-petitioner, Vijay Rao, is present in person. I have carefully considered the record and put down my opinion below.

2. The offence charged against the revision-petitioner is, as already stated, that of contempt of court, an offence which may be tried under the provisions of the Contempt of Courts Act or under the inherent powers of the Court of Record or under s. 228, Indian Penal Code, or summarily under s. 480, Indian Criminal Procedure Code if it is committed in *facie curiae*. It appears from a perusal of the record that the court has proceeded under s. 480, I.Cr.P.C. which provides, *inter alia*, that when an offence, as described in s. 228, Indian Penal Code, is committed in the view of or in the presence of the court, the court may, if it thinks fit, take cognizance of the offence and sentence the offender to a fine not exceeding Rs. 200 and in default to simple imprisonment for a month. As already stated, the learned Sessions Judge is of the opinion that the conviction of the accused is bad in law. The facts, as stated by the learned magistrate, are:

> "I was engaged in the trial of other cases when the accused approached me in connection with his 'bhatta' and behaved in a manner which comes within the meaning of contempt of court and, therefore, I proceeded against him after creating a file which should be put up to me to-day."

And in the judgment the same day the learned magistrate states that "while he was engaged in the trial of other cases, Vijay Rao approached him without permission and addressed him regarding the bhatta; that he told him that whatever bhatta is allowed under the rules will be paid to him and that he should

take it and go away, but Vijay Rao disregarding court etiquette addressed the court in harsh words repeatedly and insisted upon an increase in the amount of bhatta; that not only this he also attacked the present Government stating that now that the popular Government had been formed, the old procedure of paying bhatta cannot be correct and that if only four annas were paid, how can the Government be called a popular Government; that these harsh words and behaviour of Vijay Rao amount to contempt of court. This incident occurred on the same day at 12 p. m. in the open court when the Court Inspector and other learned vakils were present whose statements have been recorded, which also bear out the above facts. In spite of this the accused denied it but did not adduce any evidence in defence. By this act of the accused, court's time which is public time, is wasted and the trial of other cases was held up. The parties and the vakils had to wait unnecessarily. In our opinion, a charge under s. 480, Cr. P.C. and s. 228 I.P.C. has been established." The learned District and Session Judge considered the above finding as bad in law because the trial court did not mention the case in which he was engaged and stage at which he was interrupted. The above order of the magistrate will show that he was engaged in the trial of criminal cases and a perusal of the record, especially the statement of Vijay Rao, will show that he finished recording the deposition of a witness and was presumably to proceed with the recording of other depositions when the interruption occurred. In my opinion, this is sufficient. The learned District and Sessions Judge has remarked further that the trial court has not stated the nature of interruption or contempt. The above order of the magistrate will show that what the learned magistrate considered contempt, consisted in the revision-petitioner's harsh tones and rude manners when he repeatedly demanded an increased amount of bhatta and persisted in the demand in spite of the decision of the magistrate that he was entitled to no more. The question is whether this was really enough to constitute the offence of contempt. Three things are essential to constitute an offence under s. 228: (a) intention, (b) insult or interruption and (c) public servant insulted or interrupted being then sitting in any stage of judicial proceeding. It should be noted that every protest made, in fact, does interrupt the court, but it is its duty to listen to protests howmuchsoever they may delay its proceedings. So long as they are made *bona fide* they do not constitute the interruption which the section punishes as contempt. But if they are made with that sole object in view, they cease to be *bona fide* and they may then supply necessary element to constitute the offence. It should further

Vijaya Rao v. State — M. S. Ali Khan, J. —

be noted that "a full and complete record, as contemplated by s. 481 is not only a guarantee of the coolness of the judicial temper of the presiding officer but also offers material for the appellate court to proceed on." Judged on this principle the question is whether the demand in the harsh tone abruptly and without permission of the court can be regarded as contempt. Before I give a finding on this point I must first hold whether the learned District and Sessions Judge was right in considering that the appeal filed by the revision-petitioner Vijay Rao was incompetent and that he should have only filed a revision. In my opinion the learned Judge is not correct in holding that the appeal was incompetent. His reasons are that the contempt being *ex facie curiae* and sentence merely a fine, the same day and before the rising of the court, it comes under s. 413, Indian Criminal Procedure Code, and no appeal is competent under the express provision of the section. This is so, but in cl. (1) of s. 486 it is provided that "notwithstanding anything herein before contained any person sentenced under s. 480 may appeal." A perusal of s. 480, I.Cr.P.C., will show that it provides punishment for the offence of contempt according to s. 228, Indian Penal Code, when the court proceeds under this section summarily on the same day. The learned District and Sessions Judge has not considered this cl. (1) of s. 480, but has confined his attention to cl. (2), which makes Chapter XXXI of the Cr. P. Code on appeals applicable to contempt proceedings. It is evident that this does not in any way abridge the provision of appeal in cl. (1) and hence I am unable to agree that there is no appeal against the summary punishment of a fine up to Rs. 200 under s. 228, Indian Penal Code. Had the court intended severe punishment, it would have sent the case to another magistrate with a complaint in writing and in that case, provisions of s. 480 or 486 would not have applied, but those of s. 476 and 195, Criminal Procedure Code, would have applied. Thus, I hold that in the case under consideration an appeal was competent, and the learned District and Sessions Judge erred in holding otherwise. Thus evidently he could have heard the appeal and decided it himself under s. 486, Indian Penal Code. It is suggested that I should now remand the case to the learned District and Sessions Judge to dispose it of. It will only entail further delay. As the learned District and Sessions Judge has expressed his opinion on the matter, I may consider it and acting on it either accept or reject his recommendation. In my opinion, abominable though the conduct of Vijay Rao may be, yet as the learned District and Sessions Judge has held that he is of a different opinion, in a revision I may not go against his opinion. Revision is, therefore, allowed. I may however

state that Vijay Rao's conduct was reprehensible and he should desist in future from such conduct.

Revision allowed.

APPELLATE CIVIL

Before Mr. Justice Mohammed Ahmed Ansari, and
Mr. Justice P. Jagannmohan Reddy

DAYARAM SURAJMAL & Co. .. .. PETITIONERS*

v.

COMMISSIONER, EXCESS PROFITS TAX, HYDERABAD RESPONDENT

Excess Profits Tax, Hyderabad, ss. 2 (4) and 4—Charging of Excess Profits Tax—Scope—Business—Meaning—Holding of shares and accrual of dividends thereon—Whether can be deemed to be income from business for computing the Excess Profits Tax.

The petitioners firm had a credit balance of Rs. 57,041, out of which Rs. 52,500 represented dividends received on the shares of the Vazir Sultan and Co. Ltd. The petitioners transferred the said amount to the head office account at Gulbarga and did not include it in the return of profits furnished by them for IV C.A.P. for the reason that the amount constituted an income from investment on behalf of the head office at Gulbarga which had advised the petitioners to invest their surplus money in the shares of Vazir Sultan and Co , and the petitioners, instead of purchasing new shares, had transferred the shares held by them to the head office account. But the Excess Profits Tax Authorities disallowed this contention and held that inasmuch as the branch at Secunderabad was trading in stocks and shares and as there was an investment at the instance of the head office, the dividend of Rs. 52,500 was not income from investment but profit arising in the course of business carried on by the petitioners and it was liable to be taxed. The petitioners applied to the High Court under s. 48 (3) of the Excess Profits Tax Act for directing the Commissioner to state a case.

Held, that the point for consideration is not whether the amount of Rs. 52,500, received on the shares of Vazir Sultan and Co., belonged to the Secunderabad branch or should be treated as belonging to the head office at Gulbarga, but whether the said amount can be treated as profits of a business for the purposes of the Excess Profits Tax Act.

For the purposes of the Excess Profits Tax Act, it must be shown that the income proposed to be taxed is income from business within the meaning of s. 4, read with sub-s. 4 of s. 2, of the Act. The word 'business' in s. 2 (4) connotes a fundamental idea of continuous exercise of an activity, i.e., there is a succession of acts, and the performance of a single act, apart from special circumstances, is not enough, even though it may result in gains or profits.

* Reference No. 279 of 1951-52. 19th March 1953

Dayaram Surajmal & Co v. Commissioner, E.P.T., Hyderabad

M. A. Ansari, J. & P. J. Reddy, J.

It is therefore clear that the holding of property or securities cannot amount to a business within the meaning of sub-s 4 of s. 2 of the Excess Profits Tax Act. The mere fact that a proviso has been added to the said sub-section for taxing an income derived from investments or from the holding of any property by a company or society, the functions of which consist wholly or mainly in the holding of such investment or property, would demonstrate without doubt, on an application of the well accepted rule of interpretation, *expressio unius exclusio alterius*, that the income derived from the holding of investments or property generally would not be deemed to be an income from business.

Further, in order to determine whether an adventure is in the nature of trade, the essential test is whether the purchase is made not with the intention to use it nor with the intention to invest one's capital in it but with the sole object of selling it in future in order to make a profit. If the purchase is with that intention, the purchase and the subsequent sale are an adventure in the nature of trade.

But in the present case it is clear that whatever the intention of the assessee may be at the time when the shares of Vazir Sultan & Co. were purchased, no income from this transaction can be deemed to have arisen from a business unless the shares were sold. The dividends accruing to the firm from the holding of these shares cannot be deemed to be an income from a business as these accrued without any activity on the part of the assessee and therefore cannot be taken into consideration for computing the excess profits tax.

Income-Tax Commissioner v. *Shaw, Wallace and Company, 59 Indian Appeals 206*

Commissioner of Income-Tax, Bombay v. *Currimbhoy Ebrahim and Sons Ltd., 1933 Bom. 422*

Re Messrs Behari Lal Jhandu Mal, 1944 Lah. 287 *relied on.*

C. Rangachari, Advocate for Petitioners.

N. Narasimha Iyengar, Advocate for Respondent.

ORDER

E.P.T. Reference

P. JAGANMOHAN REDDY, J. —This is a reference on the application of the assessee under sub-s. (3) of s. 48 of the Excess Profits Tax Act for directing the Commissioner, E.P.T., to state a case in respect of the assessment for the IV C.A.P. The petitioners are a firm of six partners carrying on business in groundnut oil, cotton ginning and also in stocks and shares. In compliance with the notice under s. 13 (1) of the E.P.T. Act, they filed a return for the IV C.A.P. declaring profits of Rs. 1,59,052 after adjusting the profits pertaining to the standard period. During the course of the assessment it appeared that

there was a dividend account in the Secunderabad branch books which had a credit balance of Rs. 57,041, out of which Rs. 52,500 represented dividends received on the shares of the Vazir Sultan & Co. Ltd. The petitioners transferred the said amount to the Head Office account at Gulbarga and did not include it in the profits returned by the petitioners, who explained that as the branch office at Secunderabad, which was dealing in stocks and shares, had some surplus money with them, the Head Office at Gulbarga advised the branch office to invest it in the shares of the Vazir Sultan, & Co. which was effected by transferring the shares already held by the branch to the Head Office Account. The assessee contended that since the dividend of Rs. 52,500 received on account of the shares constituted income from investments, it did not attract liability to Excess Profits Tax. The Excess Profits Tax Officer, however, disallowed this contention and held that inasmuch as the branch at Secunderabad was trading in stocks and shares and as there was an investment at the instance of the Head Office the dividend of Rs. 52,500 was not income from investments, but profit arising in the course of business carried on by the petitioners and that therefore it was liable to be taxed. He accordingly added this amount to the profits returned and after estimating the income from the oil business he computed the total assessable income at Rs. 4,54,321.

The Deputy Commissioner, on appeal, gave some relief in respect of some of the profits received in the oil business and also in the computation of the capital, but disallowed the claim of the petitioners regarding the sum of Rs. 52,500 representing the dividend on shares of the Vazir Sultan & Co. Ltd. Aggrieved by the order of the Deputy Commissioner, the assessee filed a petition under ss. 20 and 48 (2) of the E.P.T. Act before the Commissioner seeking revision of the assessment made on it and in the alternative to state a case to the High Court on two questions of law arising out of the Deputy Commissioner's order, one relating to the estimate of the yield of oil and the other relating to the treatment of the dividend from investments as profits from business.

The Commissioner, however, dismissed the petition under s. 20 and refused to state a case to the High Court under s. 48 (2), as in his opinion the points raised by the assessee did not involve any questions of law. Against these orders the assessee has applied under sub-s. (3) of s. 48 of the E.P.T. Act to the High Court for directing the Commissioner to state a case. It appeared to us when the case came up for admission that the

Dayaram Surajmal & Co. v. Commissioner, E.P T , Hyderabad — M. A. Ansari, J. & P. J. Reddy, J. —

question relating to the yield of oil and cotton seeds did not involve any question of law, but with respect to the second question, viz., "whether the addition of Rs. 52,500 being dividend of Vazir Sultan & Co. in the income of the Secunderabad branch is valid in law", we were of the view that a legal question was involved. Consequently, we directed the Commissioner by our order dated 9th August 1952 to state a case on the said question.

It appears to us from the statement of the case filed by the Commissioner that during the accounting year the Secunderabad branch of the petitioners' firm collected the accrued dividends on shares on the Vazir Sultan & Co, Ltd., amounting to Rs. 52,500 and duly credited the same to the dividends account along with the other dividends. Later, however, the amount of Rs. 52,500 was transferred to the Head Office account and debited to the dividends account, while the balance in the dividends account was taken to the Profit and Loss Account. The petitioners' case before the E.P.T. authorities was that in the middle of the III C.A.P. the Head Office desired the branch to invest in shares a portion of the surplus funds lying to the credit of the said account, that instead of purchasing shares in the local market, the Secunderabad branch transferred their holdings of Vazir Sultan & Co. Ltd., shares to the extent required to the Head Office debiting the value thereof to the Head Office account. It was, therefore, urged that the dividends collected on these shares represent income from investments as distinct from income from business in shares. The Commissioner, however, observed as follows :—

> 'Admittedly the Secunderabad Branch has been and still carries on business in stocks and shares and in the face of this admission, the contention that the transfer of these shares to the Head Office account was purely by way of investment has to be established beyond reasonable doubt.'

It appears that these shares were held by the Secunderabad branch even prior to the III C.A.P. and the Commissioner, on the ground that the cost of these shares was not debited to the Head Office account, nor the shares transferred till the end of III C.A.P., came to the conclusion that this action was tainted with suspicion and attracted the provisions of s. 11 of the E.P.T. Act. He further observed that "in the absence of any convincing evidence that these shares in question were the property of the Head Office and that the Head Office directed the branch

to collect the dividends thereon, it is to be concluded that the shares belonged to the Secunderabad branch alone and as the branch admittedly purchased them in course of their business in stocks and shares, the dividends thereon represent profits from business and not income from investments." He further held that there was no justification in treating the business at Secunderabad as a separate business and held that the business in stocks and shares is deemed to have been carried on by the firm through a branch.

The whole question in this case is not whether the amount of Rs. 52,500 received on the shares of Vazir Sultan & Co. Ltd. belonged to the Secunderabad branch or should be treated as belonging to the firm, but whether the said amount can be treated as profits of a business for the purposes of the E.P.T. Act. Admittedly, these shares were held by the Secunderabad branch even prior to the III C.A.P. and had not been sold at the time of the assessment. Even if the Secunderabad branch was doing business in shares, that is, of buying and selling shares or forward business in shares, the profits of such a business can only arise from the difference in the purchase and sale price of the shares. It is not the case of the Commissioner that the Vazir Sultan shares which yielded the dividend of Rs. 52,500 were sold but his case is that as the firm was dealing in shares, any dividends accruing on any shares so purchased and held would be deemed to be income from a business taxable under the Hyderabad E.P.T. Act.

The charging section of the Excess Profits Tax is s. 4, which is in these terms:

> "Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as 'excess profits tax')"

and envisages the charge of an Excess Profits Tax accruing to the rates specified therein for the several chargeable accounting periods mentioned therein.

The section imposes the charge to Excess Profits Tax on the amount by which the profits of any business to which the Act applies during any chargeable accounting period exceed the standard profits, the standard profits being computed in accordance with the provisions of Sch. 1 to the Act in respect of the standard period elected under s. 6 thereof. The term

Dayaram Surajmal & Co v Commissioner, E.P.T., Hyderabad

M. A. Ansari, J & P. J. Reddy, J

'business' has been defined under sub-s. (4) of s. 2 in the following words:

> "'business' includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts:
>
> Provided that (i) where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purposes of this definition to be a business carried on by such company or society".

It is contended by Mr. Rangachari for the assessee that the firm of Dayaram Surajmal was not carrying on any business in shares to which the Act applied and if the operations of the Secunderabad branch are deemed to be the operations of the whole firm, even then the dividend of Rs. 52,500 cannot be deemed to be the income from a business within the meaning of sub-s. (4) of s. 2, and at any rate the proviso to the said sub-section does not apply because (a) the functions of the firm have not been shown to consist wholly or mainly in the holding of investments or other property and (b) nor has it been shown that such holding was by a company or society incorporated by or under any enactment.

It appears to us clear that the proviso to sub-s. (4) of s. 2 is inapplicable to this case on the admitted facts of the case, nor does the learned advocate for the Income Tax Authorities press his arguments on this point. For the purposes of the Excess Profits Tax Act, it must be shown that the income proposed to be taxed is income from business within the meaning of s. 4, read with sub-s. (4) of s. 2, of Excess Profits Tax Act. The word 'business' as observed by their Lordships of the Privy Council in the case of *Income Tax Commissioner* v. *Shaw, Wallace and Company*, 59 Indian Appeals 206 at p. 213 dealing with an analogous provision in s. 2 (4) of the Indian Income Tax Act, connotes a fundamental idea of the continuous exercise of an activity; or in the language of Beaumont, C.J., in the

case of *Commissioner of Income-Tax, Bombay* v. *Currimbhoy Ebrahim & Sons, Ltd.*, 1933 Bombay 422, that "carrying on business can only exist where there is a succession of acts and the performance of a single act apart from special circumstance is not enough, even though it may result in gains or profits." It is needless for us to further examine in detail the case law cited at the bar relating to what constitutes a business, as in our view it is a clear proposition of law that the holding of property or securities cannot amount to a business within the meaning of sub-s. (4) of s. 2 of the Excess Profits Tax Act. The mere fact that a proviso has been added to the said sub-section for taxing an income derived from investments or from the holding of any property by a company or society, the functions of which consist wholly or mainly in the holding of such investment or property, would demonstrate without doubt, on an application of the well accepted rule of interpretation *Expressio unius exclusio alterius*, that the income derived from the holding of investments or property generally would not be deemed to be an income from business.

The learned advocate for the Income Tax Commissioner relies upon the case of *Re-Messrs Behari Lal Jhandu Mal*, 1944 Lahore, 287 (F.B.) where the profits from the sale of gold purchased five years before were held taxable as income from an adventure in the nature of trade. The full bench consisting of Din Mohammad, Sale, and Munir, JJ. held that in order to determine whether an adventure is in the nature of trade, the essential test is whether the purchase of metal was made not with the intention to use it nor with the intention to invest one's capital in it but with the sole object of selling it in future in order to make a profit. If the purchase is with that intention, the purchase and the subsequent sale are an adventure in the nature of trade. It appears to us clear that, whatever the intention of the assessee may be at the time when the Vazir Sultan shares were purchased, no income from this transaction can be deemed to have arisen from a business unless the shares were sold. The dividends accruing to the firm from the holding of these shares cannot be deemed to be an income of a business as these accrued without any activity on the part of the assessee.

In this view of the matter our answer to the question is in the negative. The assessee will have the costs of this reference and it will be entitled to the refund of Rs. 100 deposited.

Answered accordingly.

Jevantha
v.
Hanumantha

IN THE SUPREME COURT OF INDIA
(At Hyderabad)

APPELLATE CIVIL

Before Mr. Justice Mehr Chand Mahajan,
Mr. Justice R. S. Naik, and
Mr. Justice Khaliluzzaman Siddiqi

JEVANTHA AND OTHERS .. .. APPELLANTS*

v.

HANUMANTHA AND OTHERS .. .. RESPONDENTS

Civil Procedure Code, s. 11—Res Judicata—Scope.

The father of the respondents filed a suit against the appellants for a declaration of a title in respect of certain lands. Suit was dismissed by the Munsiff for want of proof. The decision was confirmed in 1st appeal and the second appeal was dismissed for default and the decision of the lower courts became final. The valuation of the suit for purposes of jurisdiction was ten times the land revenue, i. e., 840. Subsequently the respondents filed the present suit in respect of the same land on the same allegations which were made by their father in the previous suit. This suit was valued for purposes of jurisdiction at Rs. 1,040, the land revenue at the date of the suit being Rs. 104. The appellants pleaded *res judicata* but this plea was resisted by the respondents on the ground that the munsiff who tried the former suit was not competent to try the present suit because his pecuniary jurisdiction to hear cases was below the jurisdictional value of this suit.

Held, that in order to make out a plea of *res judicata* it is necessary to prove that the court which tried the former suit was competent to try the present suit. But in order to determine whether a court which decided the former suit had jurisdiction to try the subsequent suit, regard must be had to the jurisdiction of the court at the date of the former suit and not to its jurisdiction at the date of the subsequent suit. If at that time such a court would have been competent to try the subsequent suit, had it been then brought, the decision of such court would operate as *res judicata*, although subsequently by a rise in the value of the property that court had ceased to be a proper court, so far as its pecuniary jurisdiction is concerned, to take cognizance of a suit relating to that very property.

The property in dispute in the two suits is identical. At the date of the earlier suit it was assessed to land revenue in the sum of Rs. 84, while at the date of the later suit it was assessed in the sum of Rs. 104. The difference in the jurisdictional value had arisen by reason of the increase in the land revenue assessment. This circumstance could not affect the plea of *res judicata*.

Laxmana Rao Ganu, Advocate for Appellants.

Sadashiva Rao, Advocate for Respondents.

* Civil Appeals Nos. 26 and 27 of 1950. 20th November 1950.

JUDGMENT

MAHAJAN, J. — These two appeals were presented to the Judicial Committee of the State and are now before us under art. 374 (4) of the Constitution.

On the 30th January 1913 a suit was brought by the father of the present plaintiffs against the present appellants for a declaration of his title in respect of three survey numbers, 36, 38 and 54, which were assessed at Rs. 84 land revenue. It was also prayed that a sale deed that had been executed in respect of his property by defendants 1 and 3 in favour of the second defendant be cancelled. The defendants denied the plaintiff's claim. They pleaded that the plaintiff was not a shikmedar in the land in suit and that he was not the owner of it under any sale deed and was not in possession of it. Issues 2 and 3 in this suit were in these terms :—

> 2. Whether the plaintiff is in possession as a shikmedar on half of the land in dispute and whether the other half was sold in his favour by the pattadar in the sum of Rs. 64 and therefore he is in possession as an owner of the whole of the land in dispute "
>
> 3. Whether the first defendant was competent to execute a sale deed of the land in favour of the second defendant ?

The valuation of the suit for purposes of jurisdiction was not stated in the plaint but it was mentioned therein that the land revenue assessed on it was Rs. 84. The suit was tried by the Munsiff who was competent to try suits up to the pecuniary limit of Rs. 1,000. On issues 2 and 3 the Munsiff found that the plaintiff's title, both as a shikmedar and purchaser, was not proved. It was further found that the defendants were owners of this land and were in possession of it. On appeal, the decision of the Munsiff was upheld. There was a further appeal against this decree but it was dismissed in default. As no application for restoration of the appeal was made within the time prescribed, the order for dismissal became final. The result was that the plaintiff's claim for declaration and for cancellation of the sale deed was dismissed.

On the 10th March 1930, the plaintiffs brought the suit out of which this appeal arises. In this suit, they claim possession of the same survey numbers, 36, 38 and 54, on the same allegations which were made by their father in the earlier suit.

Jevantha
v.
Hanumantha

Mahajan, J.
R. S. Naik, J.
&
K Siddiqi, J.

This suit was valued for purposes of jurisdiction at Rs. 1,040, the land revenue assessed on the land at the date of the suit being Rs. 104. The defendants pleaded that the suit was barred by *res judicata* by reason of the decision in the former suit. This plea was resisted by the plaintiff on the ground that the Munsiff who tried the former suit was not competent to try the present suit because his pecuniary jurisdiction to hear cases was below the jurisdictional value of this suit. This plea of *res judicata* was negatived in the three courts below on the ground that the Munsiff who tried the former suit was not competent to try the present suit. On the merits of the case the plaintiffs succeeded to the extent of one half on their title as shikmedars but their title on the foot of the sale deed was held not proved. This decision was maintained on appeal. On second appeal, the High Court not only upheld their title as shikmedars but also held their title on the sale deed proved. In the result, a decree in favour of the plaintiffs was passed in respect of the whole of the property. Against this decision these two appeals have been preferred on behalf of the defendants.

It is unnecessary to go into the merits of the case because we think that the defendants have made out their plea of *res judicata* and the decisions of the courts below on this issue are erroneous. It is true that in order to make out a plea of *res judicata* it is necessary to prove that the court that tried the former suit was competent to try the present suit. There can be no question about it, but it is also well settled that in order to determine whether a court which decided the former suit had jurisdiction to try the subsequent suit, regard must be had to the jurisdiction of the court at the date of the former suit and not to its jurisdiction at the date of the subsequent suit. If at that time such a court would have been competent to try the subsequent suit, had it been then brought, the decision of such court would operate as *res judicata* although subsequently by a rise in the value of the property that court had ceased to be a proper court, so far as regards its pecuniary jurisdiction, to take cognizance of a suit relating to that very property. It seems to us that this rule of law was overlooked in all the courts below. The property in dispute in the two suits is identical. At the date of the earlier suit it was assessed to land revenue in the sum of Rs. 84, while at the date of the later suit it was assessed in the sum of Rs. 104. The difference in the jurisdictional value has arisen by reason of the increase in the land revenue assessment. This circumstance, however, could not affect the plea of *res judicata*. The present suit, if brought in the year 1913, would have been within the competence of the Munsiff who

tried the first suit, because the land revenue assessed on these survey numbers then was only Rs. 84 and the valuation of the suit would have been Rs. 840, within the Munsiff's pecuniary jurisdiction. This was the only ground urged against the application of the rule of *res judicata* to this case. In all other respects it was admitted that the case was within that rule. The result therefore is that the plaintiff's suit is barred by *res judicata* by reason of the decision of the former suit decided in the year 1921.

For the reasons given above we allow both these appeals, set aside the judgment of the three courts below and dismiss the plaintiff's suit with costs throughout.

Appeals allowed.

APPELLATE CRIMINAL

Before Mr. Justice Mir Siadat Ali Khan

ABUGUNDA AND OTHERS .. .. PETITIONERS*

v.

DEVGUNDA .. .. RESPONDENT

Criminal Procedure Code, s. 145 (5)—Magistrate's finding as to the non-existence of breach of peace—Court unable to determine from whom property was taken to court's custody—Order for continuance of attachment pending decision of a civil court—Validity.

The Magistrate after coming to the conclusion that there was no likelihood of breach of peace proceeded to consider the evidence in the case for the purpose of restoring the property to the possession of the party from whom it was taken into court's custody. But as he was unable to come to a conclusion, he ordered for the continuance of court's custody pending the decision of civil court.

Held, that s. 145 (5) enacts that when there is no likelihood of breach of peace the Magistrate should from the evidence adduced in the case determine the possession of the party, what the Magistrate has done in the present case is nothing more than that, and as he could not come to a conclusion on the evidence adduced, he rightly directed that the land be kept in the possession of the court, pending the decision of a civil court.

Anand Rao v. *Maruti*, *6 Nazair-e-Osmania 100*

followed.

Revision petition against the order of the court of the Munsiff Magistrate, Bhodan, dated 19-8-1952 in case No. 301/5 of 1951 on the file of that court.

* Criminal Revision Petition No. 425/6 of 1952-53. 25th February 1953.

Abu_unda
v
D v_und

M S Ali Khan, J

Shanqar Ali
Amanullah } Advocates for Petitioners

J L Narasimha Rao, Advocate
K B Swamy Gupta, Vakil } for Respondent.

ORDER

MIR SIADAT ALI KHAN, J.—This is a revision petition against the order of the Munsiff's Court, Bhodan, dated 19th August 1952, by which the land in dispute has been taken in possession of the court and the parties directed to resort to a civil court. Against this order the revision petition has been filed and I have heard the arguments of the learned advocates of the parties, Shri Amanullah and Shri K.B. Swamy Gupta.

The learned counsel for the revision-petitioner argued that when the magistrate had come to the conclusion that there was no likelihood of breach of peace, the only thing he could do was that he should have returned the possession of the land to the party from whom it was taken. No one can dispute this proposition. The learned magistrate was himself aware of it as it appears from the statement in the judgment that unfortunately the police did not prepare a panchnama at the time of taking possession of the land in the court's custody. In the circumstances, he proceeded to consider the evidence in the case and came to the conclusion that at the time of the order or two months prior to it, the possession of neither party is established. Evidently, this conclusion after the finding that there was no likelihood of breach of peace cannot be supported; for having cancelled the preliminary order under sub-s. (1) of s. 148, H.Cr.P.C., he could not go on to determine the possession at the date of the order or two months prior to it. But it should be noted that this conclusion was only a means to an end and was not an end in itself. It was for the purpose of determining from whose possession the land was attached. And clause 5 of s. 148 enacts that when there was no likelihood of breach of peace, the magistrate should from the evidence adduced in the case determine the possession of the party. What the magistrate has done is, in my opinion, nothing more than that; and as he could not come to a conclusion on the evidence adduced, he directed that the land be kept in the possession of the court. In the circumstances, I do not see any reason to interfere. It has been laid down in 6 *Nazair-e-Osmania* 100 and 5 *Nazair-e-Osmania* 240 (full bench) that when there is no likelihood of breach of peace, the jurisdiction of the magistrate comes to an end and he cannot proceed to take evidence to

determine the possession of the parties. In the circumstances, as already stated, the only thing the magistrate could do was to determine from the evidence adduced the possession at the time of the order, and failing to reach a conclusion, continue the attachment. This view is borne out by A.I.R. 1951 Nagpur 201 where it has been held that:

> "Where the magistrate acts under sub-s. (5) and cancels the preliminary order passed under sub-s. (1), there would be nothing wrong if he passes an incidental order cancelling the order of attachment as well. It is but right that when the jurisdiction to act under the section is found wanting the magistrate should restore the *status quo ante*. When it is not possible to determine the *status quo ante* because of the difficulty in determining from whom the property was attached, the appropriate order to pass is to retain the property in the custody of the court and direct the parties to have recourse to a civil court to obtain possession of the property."

Hence, as already stated above, there is no substance in this revision petition, and it should be dismissed. I may note that the provisions of s. 148, sub-s. 5, Hyderabad Criminal Procedure Code, correspond more or less to those of sub-s. 5 of s. 145, Indian Crl. Pro. Code. I may note further that the learned counsel for the revision-petitioners argued from 6 *Nazair-e-Osmania* 100 that in the last lines of the judgment it is laid down that the magistrate should determine the possession of the party from whom the land in dispute was attached. This is so, but it can only mean that the magistrate should determine from the record already before him and should not proceed to take further evidence as no jurisdiction from the same remains with him. Ordered accordingly.

Petition dismissed.

Chanda Kantiah
v.
Commissioner,
E P T., Hyderabad

APPELLATE CIVIL

Before Mr. Justice Mohammed Ahmed Ansari, and
Mr. Justice P. Jaganmohan Reddy

CHANDA KANTIAH .. .. .. PETITIONER*

v.

COMMISSIONER, EXCESS PROFITS TAX, HYDERABAD RESPONDENT

Excess Profits Tax Act, Hyderadad, s. 5, sub-s. (2) cl. (c)—Exemption from excess profits tax on business carried on on behalf of religious and charitable institutions—Nature and scope of exemption—Institution, one of the partners in the business—Whether the business can be wholly or partly exempted from Tax.

It was contended on behalf of the petitioner that the profits of the business carried on by him in partnership with a charitable institution, namely, 'Andhra Vidhyabhi Vardhini Sangam' cannot be taken into account in computing the excess profits tax, since such a business is exempt from taxation under s. 5 (2) (c) of the Hyderabad Excess Profits Tax Act, and that at any rate, at least the profits accrued to the share of the sangam is exempt from taxation. The contention was negatived by the E.P.T. authorities, but the petitioner applied to the High Court under s. 48 (3) for directing the Commissioner to state a case.

Held, that the provisions of s. 5 (2) (c) of the E.P.T. Act are applicable, if

(1) the business is carried on on behalf of a religious or charitable institution;

(2) the profits are applied solely to the religious or charitable purposes of the institution;

(3) (a) the business is carried on for the primary purpose of the institution, or

(b) the work in connection with the business is mainly carried on by the beneficiaries of the institution.

All the three conditions enumerated above must exist in order to claim exemption. By the mere fact that one of the partners of a partnership business is a charitable institution, the business cannot be deemed to have been carried on on behalf of the religious and charitable institution or that the profits of such business are deemed to have been applied solely to the religious or charitable purposes of the institution.

Further, under sub-s. (3) of s. 14 of the E.P.T. Act, the principle of assessment is that the tax is on the profits of the business only, i.e., it is a tax on the business as a whole and not on the individual who owns the business. It is for this reason different from the Income Tax Act, where the tax is assessed on the individual members of the firm. Therefore, even if the partnership is admitted, the business carried on by the partnership is the business of the partnership and not one that is carried on, on behalf of a

*Reference No. 363 of 1359 F. 6th April 1953.

religious or charitable institution which is one of the partners, and similarly the profits of that business cannot be said to be applied solely to the religious or charitable purposes of that institution, when such a charitable institution is only one of the partners with a share of profits thereon.

There is no provision analogous to s 4 (3) (1) of the Indian Income-Tax Act, in the E P.T. Act, Hyderabad, providing for an exemption for so much of the income, profits or gains derived from property held in trust for religious or charitable purposes as are wholly or partly applied or finally set apart for application thereto. The intention of s. 5 (2) (1) of E.P.T. Act, is to exempt the income of a business as a whole where the entire business is run on behalf of the charitable institution and the whole of the profits of that business are utilized for the purposes of that charitable institution. There is no warrant to exempt a portion of the profits of a business which goes to the share of a religious or charitable institution.

Gopal Rao Ekbote, Advocate for Petitioner.

N. Narasimha Iyengar, Advocate for Respondent.

ORDER

E.P.T. Reference

P. JAGANMOHAN REDDY, J. —This is an application under sub-s. (3) of s. 48 of the E.P.T. Act for directing the Commissioner, Excess Profits Tax, to state a case on certain questions specified in the supplementary petition dated 20-2-1953 with respect to the IV C.A.P. The assessee, who is a businessman, declared his income for the IV C.A.P., but the Excess Profits Tax Officer *inter alia* added to his admitted profits, the profits from the commission business of the business styled as "Chanda Kantiah Commission Shop" and also of the business styled "Sudarshanam." The assessee contended that neither of these businesses belonged to him and that each should have been considered as separate businesses for the purposes of the E.P.T. Act. It is further stated that Chanda Kantiah Commission Shop was constituted on 1-1-1943, consisting of three partners, viz., Andhra Vidyabhi Vardhini Sangam of the first part, Nooka Agiah (brother-in-law of the petitioner) of the second part and Ghansi Ram of the third part, with shares of 0-12-0, 0-3-0 and 0-1-0 respectively, and contended that the petitioner conducted the business without any personal interest therein and merely on behalf of the said Sangam. With respect to the business styled "Sudarshanam" the assessee contended that the same belonged to the said Sangam, namely, Andhra Vidyabhi Vardhini Sangam, on the one part, and Sudarshanam, minor son of Nooka Agiah, on the other part. The petitioner claimed that he conducted this business also on behalf of the said Sangam.

Chanda Kantiah
v.
Commissioner,
E P T, Hyderabad

M A. Ansari, J.
&
P. J. Reddy, J.

The business was commenced on 5-5-1944 and was closed on 4-11-1945. The Commissioner, E.P.T., held that the Chanda Kantiah Commission business which originally belonged to a firm consisting of the assessee and one B. Venkiah was, on the dissolution of the firm, taken over by Chanda Kantiah with Nooka Agiah and Ghansi Ram as partners. The allegation that the petitioner was conducting the business on behalf of the Andhra Vidyabhi Vardhini Sangam, a charitable trust, was negatived on the ground that the said trust was only in contemplation of the petitioner on that date. The Commissioner further pointed out in his order that no evidence has been led to show the exact point of time at which the Sangam came into being, though the registration of the Sangam had been made on 6-11-1944. The allegation that the existence of the Sangam even prior to the registration of it must be inferred from the fact that the petitioner actually purchased immovable property on 17-8-1944 under a conveyance expressly reciting that he was doing so on behalf of the Sangam and from the fact that on 17-10-1944 a sum of Rs. 50,000 was deposited in the Central Bank of India, in an account opened in the name of the Sangam, has also been negatived by the Commissioner who held that at the most these circumstances indicate an intention of the assessee to make the said donation to the Sangam; but they are not by themselves conclusive of the factum of the existence or non-existence of the Sangam at the inception of the alleged partnership. He further pointed that the register containing resolutions of the Sangam produced before the Appellate Officer and before the Commissioner militated against the claim that the register was maintained in the regular course of business and even if the register was accepted, it dicloses that the Sangam took a concrete shape only on 6-11 1944. With respect to the partnerships the Commissioner held that there were no instruments evidencing the same and he stated that although the profits of Chanda Kantiah Commission Shop were actually ascertained as Rs. 13,669 on 29-10-1943, no division of profits was in fact made and the first alleged distribution of profits took place only in respect of the period ending 3-12-1945, and necessarily at a date subsequent thereto and that the two alleged partners hardly exercised any authority, nor was there anything to show that there is community of interests of any of the partners either in relation to the transactions with third parties or in regard to the actual conduct of the business itself. The Commissioner further stated that one of the partners is a Sangam which had yet to come into existence and the other was a minor. Having regard to these facts he was of the view

that the petitioner who was and continued to be a trader by calling and vocation, Nooka Agiah and Sudarshanam, the partners in each of the newly started businesses, were no other than the petitioner's own brother-in-law and his nephew respectively, the arrangements made with them fall clearly within the prohibition enacted by s. 11 of the E.P.T. Act and are, therefore, to be ignored. He also negatived the contention of the assessee that at any rate the share of profits of the business credited to sangam are liable to be excluded from assessment under the provisions of cl. (c) of sub-s. (2) of s. 5 of the E.P.T. Act. The further contention of the assessee that the sums claimed on behalf of Nooka Agiah and Ghansi Ram should be put on the footing of their being employees was also negatived. The Commissioner refused to state a case to the High Court on the ground that all these questions were questions of fact, because all that was to be done was to draw an inference on the alleged facts as to whether the alleged partnership is true or not. He held on the authority of *Nafarchandrapal Choudri* v. *Shukur Sheik*, 46 Calcutta 189 (P. C.) that there was sufficient material on record to draw an inference against the assessee.

The learned advocate for the assessee submitted a supplementary petition on 20-2-1953 setting out the following questions of law on which he wanted the High Court to direct the Commissioner to state a case:—

1. Whether the inclusion of the profits of the commission on business in the assessment of the petitioner is legal and correct?

2. Whether there is any evidence to sustain the finding of the department that the commission business was really the petitioner's business?

3. Whether, even assuming that the commission business was the petitioner's business, the petitioner is not entitled to the exemption provided in s. 5 (2) (c) of the *Dasturul-amal* in view of the fact that the business was carried on, on behalf of a charitable institution and the profits were applied solely for the purpose of the institution?

4. Whether the share of profits of Messrs. Nooka Agiah and Ghansiram should not be allowed as a business expenditure laid out wholly for the purpose of the business, even assuming that the business was carried on by the petitioner himself?

Chanda Kantiah v. Commissioner, E.P T., Hyderabad

M. A. Ansari, J. & P. J. Reddy, J.

After hearing the arguments, it is quite clear to us that questions 2 and 4 are questions of fact and question 1 has a bearing on question 3. As far as the facts are concerned, they are not disputed and it thus remains to be seen whether in law the assessee is entitled to have the additions deleted from his income. Clause (c) of sub-s. (2) of s. 5 of the E.P.T. Act, analogous to s. 4 (3) (1) (a) of the Indian Income Tax Act, is as follows:—

> "(c) profits from business carried on, on behalf of a religious or charitable institution when the profits are applied solely to the purposes of the institution, and
>
> (i) the business is carried on for fulfilment of primary object of the institution, or
>
> (ii) the work in connection with the business is mainly carried on by beneficiaries of the institution;"

Under the above provision, the E.P.T. Act will not apply, if (1) the business is carried on on behalf of a religious or charitable institution, (2) the profits are applied solely to the religious or charitable purposes of the institution, and (3) (a) the business is carried on for the primary purposes of the institution, or (b) the work in connection with the business is mainly carried on by the beneficiaries of the institution. All the three conditions named above should concur before it can be said that the provisions of the Act do not apply to any such business. Mr. Gopalrao Ekbote for the assessee contends that the assessee is carrying on the business on behalf of the Sangam and that the profits of the Sangam are applied solely to the religious or charitable purposes of the institution. With respect to the third condition stated above, he contends that the wording of the Hyderabad E.P.T. Act is different to the wording of the analogous Indian Act where the business is to be carried on *in the course of the carrying out of* a primary purpose of the institution. The underlined words, according to him, intend that the business carried on by or on behalf of the charitable institution must have some relation to the primary purpose of the institution and the deletion of these words from the Hyderabad Act would show that it is not necessary that the business must be incidental to the primary purpose of the institution. Without the necessity of having to decide whether the change in the language noticed materially affects the result, it appears to us that, on the facts admitted, it is necessary that the business should be carried on on behalf of a religious or charitable institution and the profits of that business should be applied solely to the purposes of the

religious or charitable institution. We are unable to agree with the contention of the learned advocate for the assessee that even where one of the partners of a partnership business is a charitable institution the business can be deemed to be carried on on behalf of the religious and charitable institution or that the profits of such business are deemed to have been applied solely to the religious or charitable purposes of the institution. Under sub-s. (3) of s. 14 of the E.P.T. Act where two or more persons are carrying on the business jointly in the C.A.P., the assessment shall be made upon them jointly, and in the case of a partnership, it may be made in the partnership name. The principle of assessment under the E.P.T. Act is that the tax is on the profits of the business only, i.e., it is a tax on the business as a whole and not on the individual who owns the business. It is for this reason different from the Income Tax Act where the tax is assessed on the individual members of the firm. In these circumstances, if the partnership is an admitted one, then the business carried on by the partnership is the business of that partnership and not that carried on on behalf of a religious or charitable institution which is one of the partners, and similarly the profits of that business cannot be said to be applied solely to the religious or charitable purposes of that institution, when such a charitable institution is only one of the partners with a share of profits therein. In contrast to this position, s. 4 (3) (1) of the Indian Income Tax Act, of which there is no analogous provision in the Hyderabad E.P.T. Act, provides for an exemption for so much of the income, profits or gains derived from property held in trust for religious or charitable purposes as are wholly or partly applied or finally set apart for application thereto. In our view, the intention of clause (c) of sub-s. (2) of s. 5 of the E.P.T. Act is that it exempts the income of the business as a whole where the entire business is run on behalf of the charitable institution and the whole of the profits of that business are utilised for the purposes of that charitable institution. There is no warrant to exempt only a portion of the profits of a business which goes to the share of a religious or charitable institution.

We agree with the Commissioner that in this case even assuming that the partnership has been proved, which the Commissioner has held not to have been proved, the primary pre-requisites for exempting the income of the Sangam are not present. That apart, we cannot interfere in the findings of fact by the Commissioner that the business during the year of assessment is not that of the partnership as alleged, and it is that of the assessee. In the result, we dismiss the petition with costs.

Petition dismissed.

Kishen Rao v. Mahboob Ali

EXTRAORDINARY ORIGINAL JURISDICTION

Before Mr. Lakshmi Shankar Misra, Chief Justice and Mr. Justice Rai Manohar Pershad

KISHEN RAO .. .. .. PETITIONER*

v.

MAHBOOB ALI AND COLLECTOR, GULBARGA DIST. RESPONDENTS

Constitution of India, art. 226—Petition for writ of certiorari—Order of the Additional Collector dispossessing the petitioner—Whether the order an administrative one—Characteristics of a judicial or quasi-judicial order.

Respondent M applied to the Additional Collector, Gulbarga, praying for restoration of a house which was forcibly taken possession of by the petitioner during the police action. Thereupon the Additional Collector issued a notice to the petitioner to appear and produce evidence regarding his right to the possession of the house. Ultimately he was directed to hand over possession of the house to the respondent and on his refusal the District Superintendent of Police was asked to evict the petitioner. The petitioner filed the present application for the issue of a writ of *certiorari* to quash the order of the Additional Collector on the ground that he had no jurisdiction to enquire into the question of title to property and the order is *ultra vires* and void.

Held, that the point for consideration is whether the order of the Additional Collector is an administrative order or a judicial or quasi-judicial order. In the former case, the High Court would be reluctant to issue any writ. But in the latter case, a writ of *certiorari* could be issued, provided it is a fit case for the issue of the same. The tests to decide whether an order is a judicial or quasi-judicial order would be

(a) is there any duty cast by the legistature upon the person or persons who is or are empowered to act, to determine or to decide some fact or facts ?

(b) is there some lis or dispute resulting from there being two sides to the question he has to decide ? and

(c) is there a proposal and an opposition ?

To constitute a judicial or quasi-judicial order it must be necessary that the tribunal should have to weigh the pros and cons before it can come to a conclusion. It would also have to consider facts and circumstances bearing upon the subject. In other words, the duty cast on the tribunal must not only be to determine and decide a question but there must also be a duty to determine and decide that fact judicially. If the determination or decision of the authority results in binding the subject so as to affect his right or impose a liability upon him and if the exercise of the power by the authority is made dependent by the legislature upon a contingency or condition, which condition or contingency is an objective fact to be established and not left to the opinion of the authority, then the court would come to the conclusion

*Writ Petition No. 345/5of 1951-52. 8th April 1953.

that there is a duty upon the authority not only to decide and determine but to decide and determine judicially.

A writ of *certiorari* under art. 226 of the Constitution could be issued when the person or tribunal acts in excess of jurisdiction or fails to exercise jurisdiction which is conferred upon it or in the exercise of its jurisdiction contravenes principles of natural justice. But jurisdiction is not conferred on grounds of natural justice. It has to be specifically conferred by statute and more so in the case of administrative bodies exercising judicial or quasi-judicial functions. Such bodies have to keep themselves strictly within the four corners of jurisdiction that is specifically conferred upon them; otherwise their orders become null and void. The fact that a person has to keep law and order does not confer jurisdiction to decide questions of title to property.

In the light of the principles enunciated above, the order of the Additional Collector cannot be said to be an administrative or executive order. It is a judicial or at least quasi-judicial order. The order is passed without jurisdiction and therefore liable to be quashed by the issue of a writ of *certiorari*.

Appa Rao, *Advocate* for Petitioner

B. Narahari Sastri, Govt. Advocate
Gopal Rao Ekbote, Advocate } for Respondents
Aliuddin Ansari, Advocate

JUDGMENT

RAI MANOHAR PERSHAD, J. — This is a petition for the issue of a writ of *certiorari* under art. 226 of the Constitution of India to quash the order of the Additional Collector, Gulbarga, directing that possession of the house may be given to one Yakub Ali.

The facts which have given rise to this petition are that Mohamed Mahbub Ali made a complaint to the Civil Administrator that Tukaram transferred his house in favour of his brother Mohamed Ismail who is living jointly with him and the petitioner who is the son of Tukaram has no right to the said house, as the house fell to the share of Tukaram on partition. But taking advantage of the Police Action, he had forcibly taken possession of the said house in the month of September, 1948. The Collector thereupon issued a notice to the petitioner to appear and show his right to possession of the house by producing evidence. The petitioner appeared before the Collector and objected that he had no statutory authority to enquire into the allegations. This plea of the petitioner was rejected by the Additional Collector and the petitioner was directed to give possession of the house to the complainant, and on his refusal, the Additional Collector asked the District

Kishen Rao
v.
Mal boob Ali
—
L. S. Misra, C. J
&
Manohar
Pershad, J
—

Superintendent of Police to evict the petitioner. Aggrieved by this order, the present petition has been filed for the issue of a writ of *certiorari*.

In this petition it is contended first that the Additional Collector had no jurisdiction to enquire into the question of title to property and the order of the Additional Collector is *ultra vires* and void. The second contention is that the order of the Additional Collector is based on the circular of the Civil Administrator, but this circular was never published in the Gazette, nor has it been sanctioned by the Legislature; as such, it has no binding effect. Following up this contention, it is urged that it contravenes the provisions of art. 19 of the Constitution of India. The third contention is that respondent No. 1 has no *locus standi* to file a petition for possession against the petitioner.

On behalf of respondent No. 1, Shri Gopalrao Ekbote, Advocate, in reply, contends that the conditions prevailing then were abnormal. The Collector was responsible for keeping law and order and accordingly he directed that possession of the house be given to Mohamed Munir, as he was of the opinion that Mohd. Munir was forcibly dispossessed during the Police Action. This order of the Collector, he contends, is an executive order and however illegal or *ultra vires* the act may be this Court cannot issue any writs. Reliance is placed on the case of *Province of Bombay* v. *Khushaldas S. Advani*, A.I.R. 1950 Supreme Court 222. The second contention is that the issue of a writ of *certiorari* is discretionary and the court should be reluctant to issue such a writ when the person who has come to court has not come with clean hands Reliance is placed on the case of *Mohammad* v. *High Commissioner for India in Pakistan*, A.I.R. 1951 Nagpur 38. The last contention is that no writ can be issued where the proceedings are vexatious.

A similar argument was advanced by Shri Narahari Sastri, the Advocate for the State.

In order to appreciate the view points of the learned Advocates, we have to see first what the nature of the order of the Collector is, whether it is judicial, quasi-judical or administrative. It is true that, if the order in question is purely an administrative or an executive order, this court would be reluctant to issue any writ, but if the nature of the proceedings is judicial or quasi-judicial, a writ of *certiorari* would be issued, provided it is a fit case for the issue of the same. The learned Advocate appearing

for the respondent has very candidly conceded before us that if it is held that the order of the Collector is judical or quasi-judicial a writ of *certiorari* could be issued. The test for the determination of the question would, in our opinion, be:

(a) is there any duty cast by the Legislature upon the person or persons who is or are empowered to act, to determine or decide some fact or facts ?

(b) is there some lis or dispute resulting from there being two sides to the question he has to decide ? and

(c) is there a proposal and an opposition ?

To constitute a judicial or quasi-judicial order, it must be necessary that the tribunal should have to weigh the pros and cons before it can come to a conclusion. It would also have to consider facts and circumstances bearing upon the subject. In other words, the duty cast on the tribunal must not only be to determine and decide a question, but there must also be a duty to determine or decide that fact judicially. If the determination or decision of the authority results in binding the subject so as to affect his right or impose a liability upon him, and if the exercise of the power by the authority is made dependent by the Legislature upon a contingency or a condition, which condition or contingency is an objective fact to be established and not left to the opinion of the authority, then the court would come to the conclusion that there is duty upon the authority not only to decide and determine but to decide and determine judicially.

In the case before us the Additional Collector issued the motion to the petitioner to appear and show his right to the posssession of the house by producing evidence. This issue of the motion by the Additional Collector to the petitioner to appear and produce his evidence shows that there is a lis or dispute which the Additional Collector had to decide. The dispute has been whether the subject should be deprived of his property or not. There are always two sides to the dispute. There is a proposal and an opposition, and there are equally pros and cons to be considered. The two sides are: the interest of the complainant Mohd. Ismail and others who require the property on the ground that Tukaram has sold the house and that they were rightfully in possession and have been forcibly dispossessed by Kishen. The interest of the other side, on the other hand, is that Tukaram had no right to sell the property and that he has the right to retain it. The Additional Collector has

Kishen Rao v. Mahboob Ali — L. S Misra, C. J & Manohar Pershad, J. —

held that the petitioner has not produced any evidence and has failed to establish his right and title to the property and that he occupied the said house after the Police Action. Thus, it is clear from this that there has been an adjudication on the matter. Such an act cannot be said to be a mere administrative or executive act. It is, in our opinion, if not purely a judicial act, at least a quasi-judicial act. As the learned advocate for the respondent has conceded that in case of a quasi-judical or judicial act, a writ of *certiorari* could be issued, we do not wish to discuss in detail the ruling cited by the learned advocate.

After this, we turn to the second argument of the respondent which relates to the fact that the grant of a writ of *certiorari* is discretionary in nature and the court should be reluctant to issue a writ when the person who has come to the court has not come with clean hands. In this connection, the learned advocate drew our attention to the fact that the complainants were in rightful possession of the property and the petitioner, taking advantage of the disturbed conditions in the wake of the Police Action, forcibly dispossessed him by taking the law into his own hands and when he has been ordered to be dispossessd by the Additional Collector, he has come to this court in writ proceedings which is clear to show that he has not come with clean hands. We are afraid we cannot accept this contention *in toto*.

It is true that the grant of a writ of *certiorari* is discretionary in nature and it would be refused if the proceedings appear to be vexatious and the applicant is not *bona fide* interested in the subject-matter of the application. In the case before us, it cannot be said that the petitioner has not come to the court with clean hands. Petitioner is the son of Tukaram, who is said to have transferred the property to the complainant's brother. The contention of the petitioner is that it is a joint family property. The contention of the complainant is that, in partition, the property fell to the share of Tukaram which is denied by the petitioner. It would thus appear that, rightly or wrongly, the petitioner claims a right in the property and enters into possession. Such an act of his could not be said to be an unclean or a vexatious act. It cannot also be said that he has no *bona fide* interest in the subject-matter.

Now, we have to see if this is a fit case where a writ of *certiorari* could be issued. Under art. 226 of the Constitution of India, a writ of *certiorari* could be issued when the person or the tribunal acts in excess of jurisdiction or fails to exercise

jurisdiction which is conferred upon it or in the exercise of its jurisdiction contravenes principles of natural justice. In the case before us, the contention of the petitioner is that the Collector had no jurisdiction at all. The contention of the respondents, on the other hand, is that the Additional Collector who is an executive officer possessed the requisite authority by virtue of Circular No. 1599 dated 18-6-49 and that he was acting within his jurisdiction .We find that the Additional Collector also relied on the said circular and held that he has jurisdiction, but this circular was neither produced before the Additional Collector nor has it been produced before us. We asked the learned advocate for the respondents whether there was any such circular and, if so, they should produce it. They expressed their inability. The alleged circular which is said to give jurisdiction has not been produced and no other authority has been shown. We fail to understand how the Additional Collector can get jurisdiction. Jurisdiction is not conferred on grounds of natural justice. It has to be specifically conferred by statute, and more so in the case of administrative bodies exercising judicial or quasi-judicial functions. Such bodies have to keep themselves strictly within the four corners of jurisdiction that is specifically conferred upon them; otherwise their orders become null and void. The fact that he has to keep law and order does not confer any jurisdiction to decide questions of title to property. We are therefore constrained to hold that the order of the Additional Collector is beyond his jurisdiction and that he assumed a jurisdiction not conferred on him by law when passing the order under question.

After giving a careful consideration to the above circumstances, we are of the opinion that this is a fit case where we should grant relief to the petitioner by issuing a writ of *certiorari*. The petition is therefore allowed; the order of the Additional Collector dated 24-3-1951 is hereby quashed as being *ultra vires* and null and void. The petitioner would be entitled to costs which we assess at Rs. 50.

Petition allowed.

Polsetty Papayya
v
The Hyderabad Government
—

EXTRAORDINARY ORIGINAL JURISDICTION

Before Mr. Lakshmi Shankar Misra, Chief Justice and

Mr. Justice Mir Siadat Ali Khan

POLSETTY PAPAYYA — PETITIONER*

v.

THE HYDERABAD GOVERNMENT AND ANOTHER — RESPONDENTS

Constitution of India, art. 226—Petition for a writ of certiorari to quash the order of the Revenue Minister—Asami Shikmi Act, ss. 7 and 24—Notice—Validity—Expression 'giving notice' explained—Whether one year from the date of notice should lapse before starting eviction proceedings—Promulgation of the Hyderabad Tenancy Act—S. 44—Scope—Necessity for fresh notice—Effect on proceedings started under the old Act.

The petitioner applied for a writ of *certiorari* to quash the order of the Revenue Minister reversing the appellate decision of the Board of Revenue and allowing the eviction of the petitioner. It was contended on behalf of the petitioner that the notice given under s. 7 of the Asami Shikmi Act contemplates the lapse of one year from the date of notice for determining the tenancy and the eviction proceeding started by the respondent before the completion of the year is bad in law; that the Tahsildar had contravened s. 24 sub-ss. (2), (3) and (4) in forwarding the file without making an enquiry or passing an order and the Collector had no jurisdiction to pass any order as a court of the first instance; that under the Asami Shikmi Act there was only one right of appeal and the order of the Revenue Minister in second appeal is without jurisdiction; that after the promulgation of the Hyderabad Tenancy Act there should have been a fresh notice as no right can be said to have accrued to the respondent.

Held, that the Hyderabad Tenancy Act of 1950 saves all acts done and all rights accrued before the promulgation of the Act under the Asami Shikmi Act. The question, therefore, is whether the giving of notice by the respondent was not an act done in exercise of an accrued right and saved by the repeal. The fresh notice contemplated under s. 44 of the Tenancy Act relates to such proceedings as are instituted after the promulgation of the Tenancy Act and has nothing to do with a notice issued under the old Act. The notice in the present case was an act done under the Asami Shikmi Act and is saved by s. 103 of the Tenancy Act. It is not correct to say that the right of ejectment does not accrue before the lapse of the year. The issue of the notice has nothing to do with the accrual of the right. The right to eject the tenant in certain circumstances is a right of the landlord based on his ownership and the lease. Its exercise was limited by certain conditions, one of which was the passing of one year. There was no infringement of this condition even when the Tahsildar forwarded the file to the Collector as he forwarded it on 9-6-1950 and the year of the notice was completed on 4-6-1950. Further, the Collector passed the order of eviction only on 4-9-1950. There is no prohibition to apply before the passing of the year so that ejectment takes place after the year.

*Writ Petition No. 180/51 of 1951-52 — 10th April 1953.

Secondly, the Revenue Minister was competent to pass the impugned order in second appeal since the petitioner did not object to the proceedings to be treated as one under the new Act and he himself had preferred the appeal to the Board of Revenue.

'Giving notice' occurring in s 7 of the Asami Shikmi Act, obviously refers to the act of the landlord and not to its receipt by the tenant If the landlord acts as an ordinary prudent man would act in giving notice, that should suffice.

The contention that the Tahsildar did not make any enquiry has no force since he has expressed an opinion that the tenant should be ejected on the grounds that the tenant has sub-let the land and has also spoilt the land but did not pass any formal order because of the circular that no tenant who has a standing crop should be evicted.

Since there are no valid objections to the order of the Revenue Minister and substantial justice has been done to the parties, no case has been made out for the issue of a writ of *certiorari*.

Petition for a writ of *certiorari* against the order of the Revenue Minister dated the 5th October 1951 in file No. 605-89-1950.

Gopal Rao Ekbote, *Bhimsenachari Asarat*, } *Advocates* for Petitioner

B. V. Subbarayudu, *Sadasiv Rao*, } *Advocates* for Respondents

JUDGMENT

This is a petition for a writ of *certiorari*. The petitioner Polsetty Papiah prays that the judgment of the Revenue Minister dated 5th October 1952, reversing the appellate decision of the Board of Revenue dated 24th November 1951, be quashed. The case was for ejectment of the petitioner from certain tenancy lands. The view taken by the Board was that the notice issued by Yogiraj, landlord-respondent, to the petitioner on 5-6-1949, under s. 7 of the Asami Shikmi Act, was not sufficient and a fresh notice should have been issued under the Tenancy Act. Yogiraj's notice referred to above stated that he would require the land for his own cultivation from the next cultivation year and it called upon the petitioner to vacate the land. On 9-6-1950, the Tahsildar forwarded the file to the Collector without passing any formal order in view of the circulars of the Revenue Department enjoining that no tenant who had a crop standing on the land should be dispossessed therefrom. He desired that the Collector should himself pass suitable orders. On 4-9-1950, the case was decided by the Collector.

Polsetty Papayya v. The Hyderabad Government — L. S. Misra, C. J. & M. S. Ali Khan, J.

The tenant went up in appeal to the Board of Revenue and, as already stated, the landlord appealed to the Revenue Minister (as he then was) from the judgment of the Board of Revenue. On these facts, the learned advocate for the petitioner Shri Gopalrao Ekbote pointed out that the Tahsildar did not enquire and decide the case in accordance with the provisions of s. 24 of the Asami Shikmi Act, and that he could not have decided before the year was over. Basing upon this the learned counsel argued:

(i) Under s. 7 of the Act, a notice of one year is required to determine the tenancy, that the notice given by the landlord to the tenant was dated 5-6-1949; that subsequently the respondent served another notice through the Tahsil on 22-9-1949 which was served on the tenant on 30-10-1949; that in this way the year was completed on 4-6-1950 or on 29-9-1950 if the dates of the issue of the notices are to be seen or on 29-10-1950 if the date of the serving of the notice were to be taken into consideration. The respondent, it is said, applied to the Tahsildar for the ejection of the petitioner and the restoration of the possession of the land in dispute to himself *before* the close of the year on 16th May 1950; that this was a clear contravention of the provisions of s. 24 referred to above, for the right to eject the tenant arises only after the termination of a year from the date of notice; that not only the petition was filed much before the passing of the 12 months but the Tahsildar took action on it and in contravention of the provisions of sub-ss. 2, 3 and 4 of s. 24 of the Asami Shikmi Act, forwarded the file to the Collector without making an enquiry or passing an order; that the Tahsildar was bound to enquire and pass an order; that the Collector had only an appellate jurisdiction and that subject to the orders passed by him in appeal, the act gave finality to the order of the Tahsildar. It is urged that since the Collector had no right to decide the case as a court of first instance there was a clear violation of the provisions of the statutes from the very beginning.

(ii) The next contention of the learned advocate was that as the application was under the Asami Shikmi Act there was only one appeal allowed to the Collector and possibly a revision petition to the Board of Revenue; but as the Tahsildar did not pass any order, an appeal was filed from the order of the Collector to the Board of Revenue and a second appeal to the Revenue Minister; that this was in contravention of s. 24 of the Asami Shikmi Act; and that when the Revenue Minister was of the opinion that the old Asami Shikmi Act applied to

the case he should have also held that he had no jurisdiction to hear the second appeal and should not have heard it. It is argued that the impugned decision dated 5-10 1951 was therefore without jurisdiction and a writ of *certiorari* should be issued to quash it.

(iii) The third line of argument adopted by the learned advocate on the basis of s. 24 of the Asami Shikmi Act was that since the right of the landlord to eject the tenant could mature only after the lapse of the year from the date of notice and the repeal of the Asami Shikmi Act by the Hyderabad Tenancy Act would have saved an accrued right only if a year had elapsed when the repealing Act came into force and since the year had not elapsed when the landlord applied or when the Tahsildar forwarded the file to the Collector, there was no accrued right and the repeal could not operate to save such a right. It was therefore said that the notice issued under the Asami Shikmi Act was of no effect. According to the learned counsel, there should have been a fresh notice under s. 44 of the Asami Shikmi Act. In this connection, the learned advocate emphasized also the words "giving notice" in s. 7 of the Asami Shikmi Act, which, he says, means that the tenant should be informed of the landlord's intention to eject in the sense that the information should reach him one year before the accrual of the right. It is argued that as there is nothing to show that the tenant was served before 30th October 1949 the order of the Tahsildar and of the Collector was *ultra vires* and could not be saved.

We have carefully considered the above arguments of the of the learned advocate. It is evident that the Hyderabad Tenancy Act 1950, passed on 10th June 1950, saves all acts done and all rights accrued before the promulgation of the Act under the Asami Shikmi Act, which it repeals. The question, therefore, is whether the giving of notice by the respondent landlord was not an act done in exercise of an accrued right and thus saved by the repeal. The Board of Revenue took the view that a fresh notice was required under s. 44 of the new Tenancy Act on the ground that s. 44 enacts that "a notice should be issued "after the commencement of the Act." The Revenue Minister (as he then was) took the view that the words "that the notice "should be issued after the commencement of the Act," apply to such proceedings as are instituted after the promulgation of the Tenancy Act and have nothing to do with acts done under the Asami Shikmi Act and, consequently, nothing to do with a notice issued under the old Act. The reasoning of the Revenue

Polsetty Papayya v The Hyderabad Government — L. S Misra, C. J. & M. S. Ali Khan, J.

Minister appears to be correct, for there can be no denial that the issue of the notice was an act done under the Asami Shikmi Act and it is saved by s. 103 of the Hyderabad Tenancy Act. The reasoning of the learned advocate that a right of ejectment does not accrue before the lapse of the year appears to be fallacious. The issue of the notice has nothing to do with the accrual of the right. The right to eject the tenant in certain circumstances is a right of the landlord based on his ownership and the lease. Its exercise only was limited by certain conditions, one of which was the passing of a year. In our opinion, there was no infringement of this condition even when the Tahsildar forwarded the file to the Collector, as he forwarded it on 9-6-1950 and the year of the notice was completed on 4-6 1950. Again, looking at the matter from another point of view, there was in fact no breach of the condition as no orders to eject the tenant were passed before the year was over, since the Collector passed them for the first time on 4-9-1950. There is no prohibition to apply before the passing of the year so that the ejectment takes place after the year is over. Hence, the first argument of the learned advocate that the Tahsildar had no jurisdiction to entertain the application before the year was out is incorrect. Regarding the second contention, it should be noted that on the promulgation of the new Act, the landlord applied that his petition should be deemed to be under the new Act, and the tenant did not object. In fact, it was the tenant himself who went to the Board of Revenue in appeal from the order of the Collector. In these circumstances, it cannot be denied that the proceedings were under the new Tenancy Act, and the second appeal to the Revenue Minister was fully competent. The contention of the learned advocate on this point also is, therefore, incorrect. There remains the contention that giving notice means also that the notice is served. The record shows that the petitioner purposely avoided taking notice, and even apart from this, the word "giving notice" obviously would be referable to an act of the landlord and not to its receipt by the tenant. If the landlord acts as an ordinary prudent man would act in giving notice, that should suffice. We are clearly of the opinion that there was no defect in the issue of the notice and also that the forwarding of the file by the Tahsildar to the Collector on 9th June 1950 was after the lapse of one year from the date of notice. We have already stated that, even if it had been before the year, as the ejection was not taking place within the year, the condition of a year's notice was not in any way contravened. A careful perusal of the order of the Tahsildar will show that he has clearly expresssed an opinion that the tenant should be evicted not only because he had sub-let without authority but also

because he had spoiled the land by cutting the trees and digging pits, and if the Tahsildar did not pass any formal order it was because of the circulars that no tenant should be evicted who has a crop standing. The order of the Tahsildar, therefore, means that he came to the conclusion that the tenant should be evicted but desisted from enforcing it because of the circulars. The contention that there was no enquiry is incorrect; for the Tahsildar inspected the farms in the presence of the landlord. The tenant absented himself. Incidentally, the petitioner, it would seem, is not a tenant but only a rent-racketing landlord, as after sub-letting without authority he stays in Secunderabad. At the inspection, the sub-tenants presented themselves, presumably on behalf of Polsetty Papiah. We think that the Tahsildar's conclusions and the decision of the Revenue Minister are not open to any valid objection. The parties have had substantial justice. The petition has no substance. We dismiss it with costs of the landlord-respondent which we assess at Rs. 50.

Petition dismissed.

APPELLATE CIVIL

Before Mr. Lakshmi Shankar Misra, Chief Justice and
Mr. Justice Mohammed Ahmed Ansari

THADALAPALLI SARASWATHAMMA AND ANOTHER — APPELLANTS*

v.

YADALAPALLI AMRITHAMMA .. .. — RESPONDENT

Civil Procedure Code, Hyderabad, s. 602—Right of second appeal on findings of facts—Institution of suit prior to and passing of decree after the extension of the Indian Civil Procedure Code—Indian Civil Procedure Code, s. 100—Absence of right of second appeal on findings of facts—Right of appeal, a substantive right—S. 154—Scope—Code of Civil Procedure Amendment Act, s. 20 (b)—Effect—Findings of the trial court on facts—Interference by the appellate court.

The respondent filed a suit for a declaration of title and injunction in respect of certain properties. When the suit was instituted, the Hyderabad Civil Procedure Code was in force, but while the suit was pending in the trial court, the Indian Civil Procedure Code was made applicable to this State by the Code of Civil Procedure (Amendment) Act. The respondent's suit was

Civil Appeal No. 269/2 of 1951 — 8th April 1953.

Thadalapalli Saraswathamma v. Yadalapalli Amrithamma —

dismissed by the trial court but the first appellate court decreed the suit. The appellants preferred the present second appeal which involved a consideration of findings of facts. The question arose as to whether the right of a second appeal under s. 602 of the Hyderabad Civil Procedure Code enured to the benefit of the appellants inspite of the application of the Indian Civil Procedure Code which made the finding of the lower courts on facts in second appeals binding upon the High Court.

Held, that if s. 154 of the Indian Civil Procedure Code can be construed as the only section dealing with the rights of appeals, this second appeal is not covered by it as the decrees of both the lower courts in the case have been passed after the extension of the Indian Civil Procedure Code to this State and, under s. 100 of the Code, the findings of the lower courts on facts in second appeals are binding upon this court. But to hold the section to be the sole provision, the maxim *expressio unius est exclusio alterius* will have to be applied, but the maxim has not always been applied to the interpretation of statutes.

Therefore, it is necessary to ascertain as to what is the general law relating to the rights of appeals and whether an intention to alter the general law can be inferred from the partial enactment of s. 154. It is a well established proposition of law that a right of appeal is not a mere matter of procedure but a substantive vested right which inheres in a party from the commencement of the action in the court of the first instance and if according to the law in force at the time when the action was started in the court of the first instance, the ultimate decision of such court was appealable, the right to prefer or prosecute an appeal therefrom is not affected by subsequent change of the law abolishing appeal or modifying its forum unless it is so expressly provided in the amending statute or follows by necessary implication from its terms A right of appeal is affected if some new proceeding is started after the new enactment is enforced but not if the earlier proceedings are continued.

Section 154 imperfectly enacts that which was already and more widely the law, and from this limited enactment, an intention to alter the general law should not be inferred. This view is reinforced by the provisions of s. 20 (b) of the Code of Civil Procedure (Amendment) Act (II of 1951) by which Indian Civil Procedure Code has been made applicable to Part-B States. Section 20 (b) of the Act saves rights, privileges, obligations or liabilities acquired, accrued or incurred under any of the repealed laws. Obviously, the right of appeal under s. 602 of the Hyderabad Civil Procedure Code which had accrued on the date of the institution of the suit which was earlier than the application of the Code to this State would be saved under the aforesaid s. 20 and the appellants in the present case still have the right of second appeal and can challenge in this Court the findings of facts.

Colonial Sugar Refining Co. Ltd. v. *Irving, 1950 A.C. 369.*

Delhi Cloth and General Mills Co. Ltd. v. *Income-Tax Commissioner, Delhi, 54 Indian Appeals 421.*

Ganapat Rai Hiralal v. *The Agarwal Chamber of Commerce (1952) Supreme Court Journal 564.*

Daivanayaga Reddiar v. *Renukambal Ammal, A.I.R. (1927) Mad. 977.*

Ram Singha v. *Shankar Dayal and another, A.I.R. (1928) All. 437.*

Kirpa Singh v. *Basaldar Ajaipal Singh, A.I.R. (1928) Lah. 627.*

person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree and

(*c*) before passing a decree on ground (*v*) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

Notice to be served on heirs of the husband when the husband's whereabouts are not known.

3. In a suit to which clause (*i*) of section 2 applies—

(*a*) the names and addresses of the persons who would have been the heirs of the husband under Muslim Law if he had died on the date of the filing of the plaint shall be stated in the plaint,

(*b*) notice of the suit shall be served on such persons, and

(*c*) such persons shall have the right to be heard in the suit:

Provided that paternal uncle and brother of the husband, if any, shall be cited as party even if he or they are not heirs.

Effect of conversion to another faith.

4. The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage:

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 2;

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

Rights to dower not to be affected.

5. Nothing contained in this Act shall affect any right which a married woman may have under Muslim Law to her dower or any part thereof on the dissolution of her marriage.

ANNEXURE E

The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 (XIX of 1946) as modified by the aforesaid Schedule.

An Act to give Hindu married women a right to separate residence and maintenance under certain circumstances.

WHEREAS it is expedient to provide for the right to separate residence and maintenance under certain circumstances in the case of Hindu married women;

IT is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.

(2) It extends to the whole of the State of Hyderabad.

Grounds for claiming separate residence and maintenance.

2. Notwithstanding any custom or law to the contrary, a Hindu married woman shall be entitled to separate residence and maintenance from her husband on one or more of the following grounds, namely,—

(1) if he is suffering from any loathsome disease not contracted from her;

(2) if he is guilty of such cruelty towards her as renders it unsafe or undesirable for her to live with him;

(3) if he is guilty of desertion, that is to say, of abandoning her without her consent or against her wish;

(4) if he marries again;

(5) if he ceases to be a Hindu by conversion to another religion;

(6) if he keeps a concubine in the house or habitually resides with a concubine;

(7) for any other justifiable cause;

Provided that a Hindu married woman shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by change to another religion or fails without sufficient cause to comply with a decree of a competent Court for the restitution of conjugal rights.

Amount of maintenance.

3. When allowing a claim for separate residence and maintenance under section 2, the Court shall determine the amount to be paid by the husband to the wife therefor, and in so doing shall have regard to the social standing of the parties and the extent of the husband's means.

ANNEXURE F

The Hindu Marriage Disabilities Removal Act, 1946 (XXVIII of 1946) as modified by the aforesaid Schedule.

An Act to remove certain disabilities and doubts under Hindu Law in respect of marriages between Hindus.

WHEREAS it is expedient to remove certain disabilities and doubts under the Hindu Law in respect of marriages between Hindus;

IT is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Hindu Marriage Disabilities Removal Act, 1946.

(2) It extends to the whole of the State of Hyderabad.

Marriages between persons of same gotra or pravara or of different sub-divisions of the same caste.

2. Notwithstanding any text, rule or interpretation of the Hindu Law or any custom or usage, a marriage between Hindus, which is otherwise valid, shall not be invalid by reason only of the fact that the parties thereto—

(*a*) belong to the same gotra or pravara, or

(*b*) belong to different sub-divisions of the same caste,

THE HYDERABAD SUPPRESSION OF IMMORAL TRAFFIC ACT, 1952

[Received the assent of the President on the 14th February, 1953]

HYDERABAD ACT No. XLIX OF 1952

An Act for the suppression of brothels and immoral traffic.

Preamble.

WHEREAS it is expedient to make suitable provision for the suppression of brothels and of traffic in women and girls and for other purposes of a like nature in the Hyderabad State ;

IT is hereby enacted as follows :—

Short title.

1. This Act may be called the Hyderabad Suppression of Immoral Traffic Act, 1952.

Extent and commencement.

2. The Government may, from time to time, by notification in the Jarida apply all or any of the provisions of this Act to the whole or any portion of the State of Hyderabad from such date as may be specified in the notification and may cancel or modify any such notification.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "brothel" means any house, room, or place or any part thereof which the occupier or person incharge thereof habitually uses or allows to be used by any other person for the purpose of prostitution ;

(*b*) "Commissioner of Police" means the Commissioner of Police for the cities of Hyderabad and Secunderabad ;

(*c*) "Magistrate" means a salaried Magistrate of the first class inclusive of the Commissioner of Police ;

(*d*] "prescribed" means prescribed by rules made under this Act ;

(*e*) "prostitution" means promiscuous sexual intercourse for hire ;

(*f*) "Superintendent of Police' means a District Superintendent of Police appointed under the Hyderabad District Police Act, No. X of 1329 F., or any person appointed by the Government to perform the duties of the Superintendent of Police for the purposes of this Act ;

(*g*) "Vigilance Home" means a corrective institution established or recognised by the Government, in which women are detained in pursuance of this Act and given such training and instruction and subjected to such disciplinary and moral influences as will conduce to their reformation and the prevention of offences under this Act.

Punishment for keeping a brothel or allowing premises to be used as a brothel.

4. (1) Any person who keeps or manages or acts or assists in the management of a brothel shall be punished with imprisonment which may extend to two years or with fine which may extend to one thousand rupees or with both.

(2) Any person who,

(*a*) being the tenant, lessee, occupier, or person in charge of any premises knowingly permits such premises or any part thereof to be used as a brothel ; or

(*b*) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same, or any part thereof, to any person convicted under sub-section (1) or clause (*a*) of this sub-section with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the use of such premises, or any part thereof, as a brothel; shall be punished with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees or with both.

(3) Notwithstanding anything contained in any other law for the time being in force, the owner or lessor of any house, room or place, in respect of which the lessee, tenant or occupier thereof has been convicted under clause (*a*) of sub-section (2) shall be entitled forthwith to determine such lease, tenancy or occupation.

Removal and disposal of minor girls from brothels, etc.

5. (1) Where a Magistrate has reason to believe from a report made to him by a police officer or otherwise, that a girl, apparently under the age of 18 years is living, or is carrying on, or is being made to carry on the business of prostitution in a brothel, disorderly house, or place of assignation, he may issue an order to a police officer not below the rank of an Inspector specially authorised in writing in this behalf by the Commissioner of Police, or by the Superintendent of Police, as the case may be, to enter into such brothel, disorderly house or place of assignation and to remove therefrom such girl; and thereupon such police officer shall have the power to enter into such brothel, disorderly house or place of assignation, and shall be entitled to remove forthwith from such brothel, disorderly house or place of assignation, such girl and any other girl found therein if, in his opinion, she is under the age of 18 years and is living, or is carrying on or being made to carry on the business of prostitution, in such brothel, disorderly house or place of assignation.

(2) A girl who has been so removed shall be brought before a Court established under section 40 of the Hyderabad Children Act, 1951, or where no such Court has been established before a Court sitting in the manner specified in sub-section (2) of that section and the Court shall cause an inquiry to be made and, if satisfied that the girl is under 18 years of age and that she should be dealt with, may make an order that such girl be placed until she attains the age of 21 years or for any shorter period in a rescue home or in such other custody as the Court, for reasons to be stated in writing shall consider suitable, provided that such custody shall not be that of a person or body of a different religious persuasion from that of the girl.

(3) For the determination of the question whether a girl produced before a Court under the provisions of this section is under 18 years of age, the Court shall make due enquiry as to the age of that girl and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the Court shall not be invalidated by subsequent proof that the age of that girl has not been correctly determined by the Court, and the age determined by the Court to be the age of the girl, for the purposes of this section shall be deemed to be the true age of that girl and no Court shall in appeal or revision interfere with any determination as to age made under this section.

Intermediate custody of girl removed from brothel, etc.

6. When a girl has been removed from a brothel or disorderly house or place of assignation under the provisions of sub-section (1) of section 5, the police officer carrying out the removal shall, until such girl can be brought

before the Court immediately cause her to be detained in a rescue home or in such other suitable custody (other than a police station or jail) as may be prescribed in this behalf by the Government, provided however that such custody shall not be that of a person or body of a different religious persuasion from that of the girl.

Subsequent treatment of girl committed to suitable custody under section 5 (2)

7. When an order that a girl be placed in suitable custody has been passed under sub-section (2) of section 5, the provisions of the Hyderabad Children Act, 1951, shall, subject to such modifications as the Government may prescribe by rules made under section 17, and notwithstanding her age, thereafter apply to the case of such girl during the period of the said order as if she were a child or young person dealt with under section 31 of the Hyderabad Children Act, 1951.

Punishment for living on the earnings of prostitution.

8 (1) Any person not below the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of another person shall be punished with imprisonment which may extend to two years or with fine which may extend to one thousand rupees or with both.

(2) Where any person is proved—

(*a*) to be living with, or to be habitually in the company of a person living in prostitution, or

(*b*) to have exercised control, direction or influence over the movements of a person living in prostitution in such a manner as to show that such person is aiding, abetting or compelling her prostitution with any other person or generally, it shall be presumed until the contrary is proved that such person is knowingly living on the earnings of the prostitution of another within the meaning of sub-section (1):

Provided that the mother, or a son or daughter of a person living in prostitution shall not be punished under sub-section (1) for living on the earnings of such person unless it is proved to the satisfaction of the Court that such mother, son or daughter is aiding, abetting, or compelling her prostitution.

(3) Notwithstanding anything contained in section 2, this section shall not be applied except to the cities of Hyderabad and Secunderadad or a municipality constituted under the Hyderabad Municipal and Town Committees Act, 1951, or an area situated within three miles of the limits of such cities or municipality.

Importing woman or girl for prostitution

9. Any person who takes or attempts to take or causes to be taken from one place to another any woman or girl with a view to her carrying on or being brought up to carry on the business of prostitution or causes or induces any woman or girl to carry on the business of prostitution shall be punished with imprisonment which may extend to two years or with fine which may extend to one thousand rupees or with both.

Detention for prostitution in brothel or with intent.

10. (1) Any person who detains any woman or girl against her will—

(*a*) in any house, room or place in which the business of prostitution is carried on, or

(*b*) in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband.

shall be punished with imprisonment which may extend to two years or with fine which may extend to one thousand rupees or with both.

(2) A person shall be presumed to detain a woman or girl who is in any house, room or place in which the business of prostitution is carried on, or in or upon any premises for the purposes of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,

(*a*) withholds from her any jewellery, wearing apparel or other property belonging to her, or

(*b*) threatens her with legal proceedings if she takes away with her any jewellery or wearing apparel lent or supplied to her by the direction of such person.

(3) Notwithstanding any law to the contrary such a woman or girl shall not be liable to be proceeded against civilly or criminally for taking away or being found in possession of any jewel, wearing apparel, money or other property alleged to have been lent or supplied to or to have been pledged by such woman or girl by or to the person by whom she has been detained.

Procuration.

11. Any person who induces a woman or girl to go from any place with intent that she may, for the purposes of prostitution, become the inmate of or frequent a brothel, shall be punished with imprisonment which may extend to two years or with fine which may extend to one thousand rupees or with both.

Soliciting for purposes of prostitution.

12. Whoever,

(1) in any street or public place, solicits any person for the purpose of prostitution, in such manner as to cause obstruction, annoyance or danger to the residents or passengers, or to offend against public decency, or

(2) frequents such street or public place for the purpose of prostitution or of solicitation, so as to constitute a nuisance, or to offend against public decency,

shall be punished, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both

Detention in Vigilance Home

13. (1) Where a Magistrate convicting any woman of an offence punishable under section 12 finds that she has not attained the age of thirty years, he may, in lieu of passing a sentence of imprisonment under that section, pass a sentence of detention in a Vigilance Home for a term which shall not be less than two years or more than five years.

(2) Where a Magistrate has arrived at a finding regarding the age of a woman dealt with by him under sub-section (1), such age shall, for the purpose of that sub-section, be deemed to be her true age, and no order or Judgment of the Magistrate shall be deemed to be invalid or be liable to be interfered with in appeal or revision on the ground that her age had not been correctly determined by the Magistrate.

(3) For the purposes of appeal and revision under the Code of Criminal Procedure, 1898, a sentence of detention for any period passed under sub-section (1) shall be deemed to be a sentence of imprisonment for the like period.

Arrest without a warrant

14. (1) Any police officer not below the rank of Inspector may arrest without a warrant any person who has been concerned in any offence punishable under sections 4, 8, 9, 10, 11 or 12, or against whom a reasonable

complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any such offence:

Provided that a person concerned or alleged or suspected to be concerned in an offence punishable under section 12 shall be arrested under this section only if the name and address of such person be unknown to the police officer and cannot be ascertained by him then and there, or if he has reason to suspect that a false name and address have been given.

(2) Any police officer authorised in this behalf in writing by the Commissioner of Police or the Superintendent of Police by special order, may arrest without a warrant any person committing in his view any offence punishable under sections 9, 10 or 12, if the name and address of such person be unknown to such police officer and cannot be ascertained by him then and there, or if he has reason to suspect that a false name and address have been given.

Power to enter premises.

15. (1) Notwithstanding anything contained in any other law for the time being in force, any police officer not below the rank of Inspector, and any other police officer authorised in this behalf in writing by the Commissioner of Police or the Superintendent of Police by special order, may for the purpose of ascertaining whether an offence punishable under sections 4, 8, 9, 10, 11 or 12 has been or is being committed, enter without a warrant any premises in which he has reason to believe that any woman or girl is living in respect of whom an offence punishable under sections 4, 8, 9, 10, 11 or 12 has been or is being committed.

(2) Any police officer entering any premises under sub-section (1) shall be entitled to remove therefrom any girl if, in his opinion, she is under the age of 18 years and is carrying on or being made to carry on the business of prostitution in such premises. All the provisions of this Act shall apply in regard to any girl so removed as if she had been removed under sub-section (1) of section 5.

Trial of offences.

16. No Court inferior to that of a Magistrate as defined in clause (*c*) of section 3 shall try offences under sections 4, 8, 9, 10, 11 or 12:

Provided that notwithstanding anything contained in clause (*c*) of section 3, the Commissioner of Police shall not be deemed to be a Magistrate for the purpose of this section.

Power of Government to make rules.

17. (1) The Government may make rules—

(*a*) for the care, treatment, instruction and the maintenance of girls placed in a rescue home or homes or other suitable custody under sub-section (2) of section 5;

(*b*) for the detention of girls under the provisions of section 6, subject to the restriction that no girl shall be detained in the custody of a person or body of a different religious persuasion from that of the girl;

(*c*) for the purpose of carrying into effect the provisions of section 13 and in particular, and without prejudice to the generality of this power, with regard to:—

(*i*) the management of Vigilance Homes and the appointment, powers and duties of officials in such Homes;

(*ii*) the care, treatment, maintenance, training instruction and control of the inmates of such Homes;

(*iii*) visits to, and communications with, such inmates;

(*iv*) the temporary detention of women sentenced to detention in Vigilance Homes until arrangements are made for sending them to such Homes, provided that no woman shall be detained in the custody of any person or body of a religious persuasion different from her's;

(*v*) the transfer of women from one Vigilance Home to another;

(*vi*) the transfer from Vigilance Homes to prisons of women found to be incorrigible or exercising a bad influence, and the period of their detention in such prisons, provided that such period shall not exceed one year;

(*vii*) the transfer to Vigilance Homes of women sentenced under section 12 and the period of their detention in such Homes;

(*viii*) the discharge of inmates from Vigilance Homes either absolutely or subject to conditions, and their arrest in the event of a breach of such conditions;

(*ix*) the grant of permission to inmates to absent themselves for short periods; and

(*x*) the applications of the provisions of the Hyderabad Prisons Act, No. IV of 1317 F. and the rules made under that Act to Vigilance Homes and to their inmates, subject to such adaptations, alterations and exceptions as may be specified.

(2) In making any rule under clause (*c*) the Government may provide that a breach thereof shall be punishable with fine which may extend to one hundred rupees.

Savings.

18. Save as expressly provided in this Act, the provisions thereof shall be in addition to and not in derogation of any other law for the time being in force.

Hyderabad Acts, 1952

Contents

HYDERABAD ACTS

1953

The Hyderabad Currency Demonetization (Consequential and Miscellaneous Provisions) Act, 1953

No. I of 1953

[Received the assent of the Rajpramukh on the 1st April, 1953; assent first published in the Hyderabad Gazette Extraordinary on the 1st April, 1953]

An Act to make certain provisions in consequence of demonetization of the Hyderabad O. S. Currency, with effect from 1st April, 1953.

Preamble.

WHEREAS it is expedient to make certain provisions in consequence of the demonetization of the Hyderabad O. S. Currency. with effect from 1st April, 1953;

IT is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Hyderabad Currency Demonetization (Consequential and Miscellaneous Provisions) Act, 1953.

(2) It shall extend to the whole of the State of Hyderabad.

(3) It shall come into force, with effect from 1st April, 1953.

Provisions consequential on demonetization of Hyderabad O. S. Currency.

2. Subject to the provisions of this Act references express or implied in any Hyderabad Law, Regulation, notification, order, bye-law, contract and agreement (oral or written), bond and other instruments, which immediately before the commencement of this Act were in force in the Hyderabad State, shall be construed as if references therein to any amounts in O. S Currency were references to the equivalent amounts in I. G. Currency according to the standard rate of exchange and all rights and liabilities express or implied in O. S. Currency in force before such commencement shall be construed accordingly:

Provided that nothing in this section shall preclude a person from paying his dues in equivalent O. S. Currency to the extent and for the purposes for which the same continues as legal tender in Hyderabad State after the thirty-first day of March, 1953.

Illustration.—References to O. S. Rs. 7 in any law or other matters mentioned in this section shall be construed as if such references were references to Rs. 6 in I.G. Currency according to the standard rate of exchange.

Rounding off.

3. To facilitate the calculation for purposes of payment the total amount payable in any case by virtue of the provisions of section 2 shall be rounded off to the nearest quarter-anna in I. G. Currency.

4. Section 2 of the Hyderabad General Clauses Act (III of 1308 F.) shall be amended as follows: —

For clause (22) in the said section the following clause shall be substituted namely:— Amendment of section 2, Hyderabad Act III of 1308 F.

"(22) 'rupee' means a rupee in I.G. Currency and fractional denominations of a rupee shall be construed accordingly."

5. If any difficulty arises in the application of this Act and in the transition from O.S. Currency to I.G. Currency the Government may by notification in the Jarida make such provisions as it considers necessary for the removal of the difficulty. Removal of difficulties.

The Hyderabad State Appropriation Act, 1953
No. II of 1953

[Received the assent of the Rajpramukh on the 1st April, 1953; assent first published in the Hyderabad Gazette Extraordinary on the 1st April, 1953].

An Act to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State of Hyderabad for the service of the year ending on the 31st day of March, 1954.

WHEREAS it is expedient to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State of Hyderabad for the service of the year ending on the 31st day of March, 1954; Preamble.

IT is hereby enacted as follows:—

1. (1) This Act may be called the Hyderabad State Appropriation Act, 1953. Short title and commencement.

(2) It shall come into force at once.

2. From and out of the Consolidated Fund of the State of Hyderabad there may be paid and applied sums not exceeding those specified in column 6 of the Schedule amounting in the aggregate to the sum of rupees fifty-one crores, thirty-eight lakhs, sixty-two thousand, three hundred and twenty towards defraying the several charges which will come in course of payment during the year ending on the 31st day of March, 1954, in respect of the services specified in column 2 of the Schedule. Issue of Rs. 51,38,62,820 out of the Consolidated Fund of the State of Hyderabad for the year ending on 31st day of March, 1954.

3. The sums authorised to be paid and applied from and out of the Consolidated Fund of the State of Hyderabad by this Act, shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the 31st day of March, 1954. Appropriation.

[Schedule

SCHEDULE

(See Sections 2 and 3)

Srl. No.	Services and purposes	Heads of Account	Sums not exceeding Voted by the Legislative Assembly	Sums not exceeding Charged on the Consolidated Fund	Total
1	2	3	4	5	6
1	Taxes on Income other than Corporation Tax	4. Taxes on Income other than Corporation tax	67,000	..	67,000
2	Land Revenue	7. Land Revenue	1,35,14,000	..	1,35,14,000
3	State Excise Duties	8. State Excise Duties ..	78,80,000	..	78,80,000
4	Stamps	9. Stamps	3,28,000	..	3,28,000
5	Forest	10. Forest	34,88,000	..	34,88,000
6	Registration	11. Registration	4,24,000	..	4,24,000
7	Charges on Account of Motor Vehicles Acts	12. Charges on Account of Motor Vehicles Acts	15,42,000	..	15,42,000
8	Other Taxes and Duties ..	13. Other Taxes and Duties ..	49,35,000	..	49,35,000
9	Irrigation Works :— Works for which Capital Accounts are kept	17. Irrigation etc. Works for which Capital Accounts are kept: Working expenses..	10,65,000	..	10,65,000
10	Other Revenue Expenditure financed from ordinary Revenues	18. Other Revenue Expenditure financed from ordinary Revenues	89,83,000	..	89,83,000
11	Interest on Debt ond other obligations	22. Interest on Debt and other obligations		1,13,15,000	1,13,15,000
12	Appropriation for reduction or Avoidance of Debt ..	23. Appropriation for reduction or Avoidance of Debt ..		2,09,14,000	2,09,14,000
13	General Administration ..	25. General Administration ..	86,88,300	3,49,700	90 38,000
14	Administration of Justice ..	27. Administration of Justice ..	42,41,800	8,58,200	51,00,000
15	Jails and Convict Settlements	28. Jails & Convict Settlements	26,26,000	..	26,26,000
16	Police	29. Police	3,38,57,000	..	3,38,57,000
17	Scientific Departments	36, Scientific Departments ..	4,71,000	..	4,71,000
18	Education ..	37. Education	4,75,76,000	..	4,75,76,000
19	Medical ..	38. Medical	1,11,54,000	..	1,11,54,000
20	Public Health ..	39. Public Health	75,80,000	..	75,80,000
21	Agriculture ..	40. Agriculture	72,86,000	..	72,86,000
22	Veterinary ..	41. Veterinary	20,01,000	..	20,01,000
23	Co-operation ..	42. Co-operation	20,93,000	..	20,93.000
24	Industries and Supplies	43. Industries and Supplies ..	21.32,000	..	21,32,000
25	Misc. Departments ...	47. Misc. Departments	1,66,36,030	..	1,66,36,030
26	Civil Works ..	50. Civil Works	2,03,30,000	..	2,03,30,000

27	Other Revenue Expenditure connected with Electricity Schemes	52-A. Other Revenue expenditure connected with Electricity Schemes	21,000	..	21,000
28	Territorial and Political Pensions	54–A. Territorial and Political Pensions	10,29,000	..	10,29,000
29	Superannuatian Allowances and Pensions	55. Superannuation Allowances and Pensions	2,17,29,400	4,07,600	2,21,37,000
30	Stationery and Printing ..	56. Stationery and Printing ..	32,30,000	..	32,30,000
31	Miscellaneous	57. Miscellaneous	2,44,83,000	..	2,44,83,000
32	Community Development Projects	63–B. Community Development Projects	18,00,000	..	18,00,000
	Total Expenditure on Revenue Account ..		26,11,90,530	3,38,44,500	29,50.35,030
33	Irrigation	68. Construction of Irrigation Works, etc.	3,99,08 000	..	3,99,08,000
34	Public Health	70. Capital outlay on Improvement of Public Health ..	24,56,000	..	24,56,000
35	Multi-purpose River Schemes	80–A. Capital outlay on Multi-purpose River Schemes ..	1,06,93,000	..	1,06,93,000
36	Civil Works	81. Capital Account of Civil Works outside the Revenue Account	54,92,000	..	54,92,000
37	Electricity Schemes ..	81.–A. Capital outlay on Electricity Schemes ..	57,30,000	..	57,30,000
38	Capital Account of other States Works	82. Capital Account of other States Works outside the Revenue Account ..	43,00,000	..	43,00,000
39	Payment of commuted value of Pensions	83. Payment of commuted value of Pensions	3,43,000	..	3,43,000
40	State Schemes connected with State Trading	85–A. State Schmes connected with State Trading ..	5,69,71,000	..	5,69,71,000
	Total Capital Expenditure outside the Revenue Account ..		12,58,93,000	..	12,58,93,000
41	Repayment of Debt ..	N. Public Debt Discharged ..	..	38,91,580	38,91.580
42	Loans and Advances by State Government	Loans and Advances by State Government	8,90,42,710	..	8,90,42,710
	Total Disbursements under Debt Heads		8,90,42.710	38.91.580	9,29,34,290
		GRAND TOTAL	47,61,26,240	3,77,36,080	51,38,62,320

The Hyderabad State Supplementary Appropriation Act, 1953.

No. III of 1953

[Received the assent of the Rajpramukh on the 1st April, 1953; assent first published in the Hyderabad Gazette Extraordinary on the 1st April, 1953].

An Act to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Hyderabad for the service of the year ending on the 31st day of March, 1953.

WHEREAS it is expedient to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Hyderabad for the service of the year ending on the 31st day af March, 1953;

IT is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Hyderabad State Supplementary Appropriation Act, 1953.

(2) It shall come into force at once.

Issue of Rs. 4,44,45,749 out of the Consolidated Fund of the State of Hyderabad for the year 1952-53.

2. From and out of the Consolidated Fund of the State of Hyderabad there may be paid and applied sums not exceeding those specified in column 5 of the Schedule amounting in the aggregate to the sum of four crores, forty-four lakhs, forty-five thousand, seven hundred and forty-nine rupees towards defraying the several charges coming in course of payment during the year ending on the 31st day of March, 1953, in respect of the services specified in column 2 of the Schedule.

Appropriation.

3. The sum authorised to be paid and applied from and out of the Consolidated Fund of the State of Hyderabad by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the year ending on the 31st day of March, 1953.

[Schedule

SCHEDULE

(SEE SECTIONS 2 AND 3)

Srl. No.	Services and purposes	SUMS NOT EXCEEDING		
		Charged on the Consolidated Fund	Other expenditure to be met out of the Consolidated Fund	Total
1	2	3	4	5
1.	Taxes on Income other than Corporation Tax	..	33,000	33,000
2.	Land Revenue	..	4,90,000	4,90,000
3.	Stamps	..	1,142	1,142
4.	Charges on account of Motor Vehicles Acts	..	571	571
5.	Other Taxes and Duties	..	81,714	81,714
6.	Interest on Debt and other obligations ..	7,47,000	..	7,47,000
7.	General Administration	16,015	3,53,270	3,69,285
8.	Administration of Justice	1.20,000	..	1,20,000
9.	Police	..	32,57,000	32,57,000
10.	Public Health	..	2,17,429	2,17,429
11.	Miscellaneous Departments	..	22,29,300	22,29,300
12.	Famine	..	10,08,000	10,08,000
13.	Territorial & Political Pensions	..	2,98,000	2,98,000
14.	Miscellaneous	..	1,26,86,000	1,26,86,000
15.	Community Development Projects ..	..	4,29,000	4,29,000
	Total (1 to 15) ..	8,83,015	2,10,84,426	2,19,67,441
16.	Capital Account of other Provincial Works outside the Revenue Account	..	8,63,300	8,63,300
17.	Payment of commuted value of Pensions ..	..	2,78,700	2,78,700
18.	Appropriation to the Contingency Fund ..	..	1,00,00,000	1,00,00,000
	Total (16 to 18) ..	..	1,11,42,000	1,11,42,000
19.	Loans from the Government of India and other loans	12,00,093	..	12,00,093
20.	Loans to Municipalities, Civil Supplies, etc.	..	1,01,36,215	1,01,36,215
	Total (19 & 20) ..	12,00,093	1,01,36,215	1,13,36,308
	GRAND TOTAL ..	20.83,108	4,23,62,641	4,44,45,749

The Hyderabad Forest (Amendment) Act, 1953
Hyderabad Act No. IV of 1953.

[Received the assent of the Rajpramukh on the 22nd April, 1953, assent first published in the Hyderabad Gazette Extraordinary on the 24th April, 1953]

An Act to amend the Hyderabad Forest Act, 1355 Fasli.

Preamble

WHEREAS it is expedient to amend the Hyderabad Forest Act, 1355 F. (Act No II of 1355 F.) for the purposes hereinafter appearing,

IT is hereby enacted as follows:—

Short title and Commencement

1. (1) This Act may be called the Hyderabad Forest (Amendment) Act, 1953

(2) It shall come into force from the date of its publication in the Jarida.

Amendment of section 35, Hyderabad Act II of 1355 F

2. For sub-section (1) of section 35 of the Hyderabad Forest Act, 1355 F. the following sub-section shall be substituted, namely:—

"(1) The Government may, by notification in the Jarida, in order to prohibit or regulate the following matters in a forest or waste land, issue orders to the owners thereof:—

(*a*) the digging or clearing of land for cultivation,

(*b*) the pasturing of cattle,

(*c*) the clearing or firing of the vegetation; or

(*d*) the cutting and felling of trees, when such prohibition or regulation appears to the Government to be necessary for the following purposes:—

(*i*) for protection against storm, wind, rolling stones, flood and hurricane;

(*ii*) for the preservation of the soil of the ridge or slope and in valleys and hilly area, the prevention of landslip or of the formation of ravine or torrents, or the protection of land against erosion, or the deposit thereon of sand, gravel or stone;

(*iii*) for maintenance of water reservoir, river or tank;

(*iv*) for the protection of roads, bridges, railways and other means of communications;

(*v*) for the preservation of health; or

(*vi*) for the conservation of any forest."

The Indian Law Reports
Hyderabad Series

The rate of annual subscription and price of single parts are as follows :—